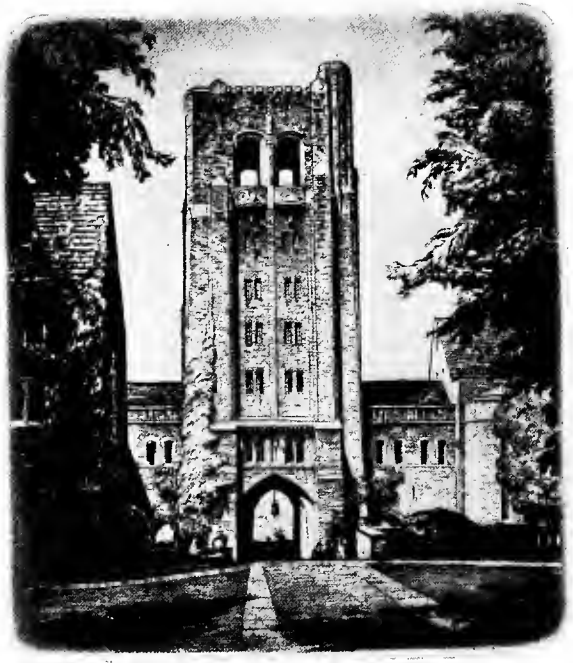

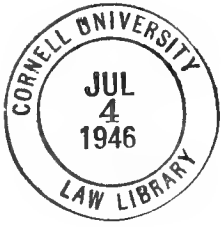

BY-LAWS

OF

PRIVATE CORPORATIONS

BY

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PREFACE.

The law pertaining to by-laws has never, I believe, been made the subject of any other book except Lumley on By-Laws, and that work is exclusively English, and has little if anything to say in regard to the by-laws of private corporations, being concerned with the ordinances of municipal or *quasi* municipal corporations. In the present work, I have confined myself to the subject of by-laws of private corporations and associations. When I have ventured somewhat beyond the scientific limits of the subject, it has been with a view to rendering the work more useful to mutual insurance and building and loan associations.

The general by-laws found in the Appendix are mainly framed from those which the author has had occasion to draw from time to time for the use of clients. As stated in the Appendix, these forms must be taken rather as suggestions than as models, since no one set of by-laws can be so framed as to be suitable for all corporations.

In this edition there has been also inserted in the Appendix copies of the by-laws of two of our great industrial corporations,—the Standard Oil Company and the Federal Steel Company.

The nine years that have passed since the first edition of this work was published have been so fruitful in corporation decisions that I have been able to double the number of citations to adjudicated cases.

LOUIS BOISOT.

Chicago, Ill., Sept., 1901.

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BY-LAWS

CHAPTER I.

NATURE OF BY-LAWS.

Definition.

§ 1. By-laws have been defined as regulations, ordinances, or rules enacted by a private corporation for its own government.[1] The term "by-law" is sometimes applied to the regulations of municipal as well as of private corporations,[2] though the former are more generally denominated "ordinances." The constitution of a voluntary

[1] Shumaker's Law Dict. sub nom "By-Laws." See Commonwealth v. Turner (1848) 1 Cush. (Mass.) 493. "A by-law is a permanent and continuing rule for the government of the corporation and its officers." North Milwaukee Town Site Co., No. 21, v. Bishop (1899) 103 Wis. 492. 79 N. W. 785.

[2] Such is the uniform English practice.

association or corporation, as distinguished from its charter, is really a by-law under an inappropriate name.[3] Hence the constitution of a mutual benefit society, forming no part of its charter, cannot deprive the lawfully constituted authorities of the corporation of their inherent power to adopt such other by-laws as the charter permits.[4]

Distinguished from ordinances.

§ 2. The distinction between the ordinances of a municipal corporation and the by-laws of a private corporation is as marked and fundamental as the distinction between the two classes of corporations themselves. The ordinances of a municipal corporation bind all those who happen to be within the territorial limits of its jurisdiction, whether they are corporators or strangers, and whether they have assented to such ordinances or not; but the by-laws of a private corporation derive their force from assent, either actual or constructive, and are binding upon no one except those who have in some way, either directly or indirectly, promised to obey them.[5]

[3] Supreme Lodge, K. of P., v. Knight (1889) 117 Ind. 495, 20 N. E. 479; Supreme Lodge, K. of P., v. Kutscher (1899) 179 Ill. 340, 53 N. E. 620; Dornes v. Supreme Lodge, K. of P. (1898) 75 Miss. 466, 23 So. 191. But see In re Skandinaviska (1894) 3 Pa. Dist. Rep. 235. And in a recent case the supreme court of Illinois intimates that there may be a distinction between constitutional provisions and by-laws. People v. Women's Catholic Order of Foresters (1896) 162 Ill. 78, 44 N. E. 401.

[4] Supreme Lodge, K. of P., v. Kutscher (1899) 179 Ill. 340, 53 N. E. 620; Supreme Lodge, K. of P., v. Trebbe (1899) 179 Ill. 348, 53 N. E. 730; Richardson v. Union Congregational Soc., 58 N. H. 188.

[5] Black & White Smith's Soc. v. Vandyke (1836) 2 Whart. (Pa.) 311; Cudden v. Estwick (1704) 6 Mod. 124; Bank of Holly Springs v. Pin-

Binding effect.

§ 3. What the constitution is to the state, its charter is to a corporation; what acts of the legislature are to the citizens of a state, the by-laws of a corporation are to its stockholders. A valid by-law is as much a law of a corporation as the charter is.[6] It is an act of private legislation, and, when properly adopted, and not contrary to law and public policy, is binding upon the corporation and its members, however inconvenient or embarrassing its effects may be.[7] Thus it has been said that the by-laws of a corporation, made in pursuance of its charter, are clearly as binding on all its members as any public law of the state.[8]

Distinguished from resolutions.

§ 4. A by-law may be in the form of a resolution,[9] but a resolution is not necessarily a by-law.[10] Thus, a mere resolution of the directors in reference to a particular case, and not of general application, does not constitute a by-law;[11] and where a statute of incorporation provides that the by-laws shall be in writing and under the corporate

son (1880) 58 Miss. 435; Morgan v. Bank of North America (1822) 8 Serg. & R. (Pa.) 88, 11 Am. Dec. 575.

6 Kent v. Quicksilver Mining Co. (1879) 78 N. Y. 179.

7 Weatherly v. Medical & Surgical Soc. (1884) 76 Ala. 567.

8 Cummings v. Webster (1857) 43 Me. 197.

9 Dornes v. Supreme Lodge, K. of P. (1898) 75 Miss. 466, 23 So. 191.

10 Drake v. Hudson River R. Co. (1849) 7 Barb. (N. Y.) 539; Budd v. Multnomah Street Ry. Co. (1887) 15 Or. 413.

11 Budd v. Multnomah St. Ry. Co. (1887) 15 Or. 413.

seal, a resolution passed at a general meeting, and not reduced to writing, is not a by-law.[12]

Distinguished from regulations.

§ 5. The distinction between by-laws and mere regulations for the conduct of a corporation's business is one that it is sometimes difficult to draw, and the two are often confounded. By-laws are intended to control the action of the corporation; they are usually in writing, and are adopted by the corporation or its board of directors. Regulations, on the other hand, are intended to control the conduct of those dealing with the corporation, or of its employes. They are often not reduced to writing, and are frequently proclaimed by the officers of the corporation on their own authority.

Incidental to corporate existence.

§ 6. The right to enact by-laws as a private constitution for their government is incidental to all corporations aggregate;[13] and it has been said that corporations have exercised this right ever since the time of the Roman law

[12] Dunston v. Imperial Gas Light & C. Co. (1831) 3 Barn. & Adol. 125.

[13] Leggett v. New Jersey M. & B. Co. (1832) 1 N. J. Eq. 541; People v. Throop (1834) 11 Wend. (N. Y.) 186; Cunningham v. Alabama Life Ins. & T. Co. (1843) 4 Ala. 654; Came v. Brigham (1854) 39 Me. 38; People v. Medical Soc. (1857) 24 Barb. (N. Y.) 574; Anacosta Tribe v. Murbach (1858) 13 Md. 94; Supreme Commandery v. Ainsworth (1882) 71 Ala. 445; Taylor v. Griswold (1834) 14 N. J. Law, 227; Rex v. Westwood (1830) 2 Dow. & C. 21, 4 Bligh (N. S.) 213, 7 Bing. 1; People v. Burnham Hospital (1896) 71 Ill. App. 246; Engelhardt v. Fifth Ward P. D. S. & L. Ass'n (1896) 148 N. Y. 286, 42 N. E. 710; State v. Bank of Louisiana (1827) 5 Mart. (N. S.; La.) 327, 344.

of the Twelve Tables.[14] Usually the power to pass by-laws is specified in the charter or statute of incorporation, but even where they are silent, a corporation has the implied power to make by-laws as incident to its right to manage and control its own affairs. But where the statute or charter gives the corporation power to make by-laws for certain specified purposes, it can enact none for any other purpose.[15]

Scope limited by necessity.

§ 7. As by-laws are necessary for conducting the business of corporations, the scope of such by-laws is measured by their necessity. A corporation, therefore, cannot make a by-law in regard to a matter over which the corporation has no control,[16] and if the subject of a by-law is clearly alien to the nature of the corporation, and is a departure from its purpose, such a by-law is *ultra vires* and void.[17] By-laws, to be valid, must be general and apply to all members alike.[18] They must be certain and must operate equally on all within the sphere of their

[14] Taylor, Priv. Corp. § 7; 1 Bl. Comm. *476.

[15] Child v. Hudson's Bay Co. (1723) 2 P. Wms. 208; State v. Ferguson (1856) 33 N. H. 424; Ireland v. Globe M. & R. Co. (1895) 19 R. I. 180, 32 Atl. 921.

[16] Company of Horners v. Barlow (1688) 3 Mod. 159; Kolff v. St. Paul Fuel Exchange (1892) 48 Minn. 215, 50 N. W. 1036; Crumpton v. Pittsburg Council, No. 117 (1896) 1 Pa. Super. Ct. 613, 38 Wkly. Notes Cas. 335. See post, § 44.

[17] People v. Chicago Board of Trade (1867) 45 Ill. 118; Taylor v. Griswold (1834) 14 N. J. Law, 227.

[18] People v. Young Men's Father Matthew T. A. B. Soc., No. 1 (1879) 41 Mich. 67; Budd v. Multnomah Street Ry. Co. (1887) 15 Or. 418.

operation.[19] They must stand on their own validity, and not on any special dispensation granted to particular members. It is therefore no answer to a member who complains of an illegal by-law to say that he has been exempted by resolution from its penalties.[20]

Office.

§ 8. The office of a by-law is to regulate the conduct and define the duties of the members towards the corporation and between themselves. So far as its provisions are in the nature of contracts, the parties thereto are the members of the association as between themselves, or the corporation on the one side and its individual members upon the other. The right of any third party to establish a legal claim through such a by-law must depend upon the general principles of law applicable to express contracts.[21] Although by-laws are in the nature of contracts regulating the business of a corporation, yet it has been said that what might very well be made the subject of contract between co-partners might not be good as a by-law of a corporation.[22]

By-laws are enacted for the government of a going con-

[19] Goddard v. Merchants' Exchange (1880) 9 Mo. App. 295; Baltimore B. & L. Ass'n v. Powhatan Imp. Co. (1898) 87 Md. 59, 39 Atl. 274; Wierman v. International B. L. & I. Union (1896) 67 Ill. App. 550; Dornes v. Supreme Lodge, K. of P. (1898) 75 Miss. 466, 23 So. 191. See post, c. 3, §§ 4, 5.

[20] People v. Young Men's Father Matthew T. A. B. Soc., No. 1 (1879) 41 Mich. 67, 1 N. W. 931, 6 Am. Corp. Cas. 626.

[21] Flint v. Pierce (1868) 99 Mass. 70.

[22] Adley v. Whitstable Co. (1810) 17 Ves. 315.

cern, and necessarily cease to operate when the association becomes insolvent.[23] It has been held in New York that, where the statute declares that the stock shall be transferable in such manner as may be agreed on in the articles of association, a corporation cannot regulate the transfer by by-law.[24]

[23] Chapman v. Young (1895) 65 Ill. App. 131.

[24] Bank of Attica v. Manufacturers' & Traders' Bank (1859) 20 N. Y. 501.

CHAPTER II.

FORM AND ENACTMENT.

Writing unnecessary.

§ 9. It has been said that by-laws need not be in writing,—that they may be adopted as well by the company's conduct as by an express vote at a meeting.[1] But though

[1] Bank of Holly Springs v. Pinson (1880) 58 Miss. 421; State v.

by-laws need not be in writing, unless the statute or the charter so require, but may be adopted by long-continued and invariable custom, yet the custom itself does not take the place of a by-law, but is merely evidence that such a by-law has been adopted.[2] The proof of the adoption of by-laws need not be in writing; that is, there need not be a written record showing their adoption.[3]

Writing advisable.

§ 10. But it is undoubtedly a better plan to have all by-laws reduced to writing, and to have the fact of their adoption clearly shown by the records of the corporation. Where the charter or statute provides that by-laws shall be in writing under the corporate seal, resolutions passed by the corporation at a general meeting, but not reduced to writing, are not by-laws,[4] and under such a statute, by-laws written in the corporate records, but not attested by the corporate seal, are equally invalid.[5]

It seems necessary to add that by-laws should be clear and concise, for the courts have frequently expressed their impatience with the prolix, obscure and involved provisions and conditions which co-operative associations often incorporate into their by-laws.[6]

Silva (1895) 130 Mo. 440, 32 S. W. 1007; Stafford v. Produce Exchange Banking Co. (1898) 16 Ohio Cir. Ct. 50, 8 Ohio Dec. 483.

[2] District Grand Lodge v. Cohn (1886) 20 Ill. App. 344.

[3] Union Bank v. Ridgely (1827) 1 Har. & G. (Md.) 412.

[4] Dunston v. Imperial Gas Light & C. Co. (1831) 3 Barn. & Adol. 125.

[5] McDonell v. Ontario, S. & H. R. U. Co. (1854) 11 Up. Can. Q. B. 267.

[6] Schultz v. Citizens' Mut. Life Ins. Co. (1894) 59 Minn. 308, 61 N. W. 331.

How adopted.

§ 11. Where neither the articles of incorporation nor the general statutes confer upon the directors the power of enacting by-laws, such power can only be exercised by the corporation itself,—that is, by the stockholders at a stockholders' meeting.[7] By-laws passed by the directors in the absence of any authority to do so are of no effect.[8] On the other hand, where the directors are invested with the power of passing by-laws, by-laws passed by the stockholders are not binding.[9]

Informalities disregarded.

§ 12. But in such cases, the courts pay attention less to form than to substance. Thus, where all the stock of a corporation was held by four persons who were the offi-

[7] Morton Gravel Road Co. v. Wysong (1875) 51 Ind. 12; State Savings Ass'n v. Nixon-Jones Printing Co. (1887) 25 Mo. App. 642; Hughes v. Wisconsin Odd Fellows' Mut. Life Ins. Co. (1898) 98 Wis. 292, 73 N. W. 1015; North Milwaukee Town Site Co., No. 2, v. Bishop (1899) 103 Wis. 492, 79 N. W. 785; Watson v. Sidney F. Woody Printing Co. (1894) 56 Mo. App. 145; United Fire Ass'n v. Benseman (1877) 4 Wkly. Notes Cas. (Pa.) 1; Thayer v. Herrick (1876) Fed. Cas. No. 13,868. A statute placing the affairs of corporations under the management of their directors does not give the directors power to pass by-laws. North Milwaukee Town Site Co., No. 2, v. Bishop (1899) 103 Wis. 492, 79 N. W. 785.

[8] Carroll v. Mullanphy Savings Bank (1880) 8 Mo. App. 253.

[9] In re Klaus (1886) 67 Wis. 405. In has been held in England, however, that the charter of a municipal corporation giving a select body the power to make by-laws did not take away such power from the general body of corporators, and there is nothing in the reasoning of the opinion to limit the doctrine to municipal corporations. Rex v. Westwood (1830) 2 Dow. & C. 21.

cers and managers of the company, and the charter provided that the directors and managers might adopt by-laws, it was held that by-laws adopted by such four persons were valid, although the meeting at which they adopted them was a meeting of stockholders.[10] And under a law providing that by-laws should be enacted by the stockholders, a code of by-laws unanimously adopted at a meeting of directors was held to be regularly adopted where the directors owned all the stock of the corporation.[11] The rule deducible from these decisions is that, where by-laws are adopted by persons who have authority to do so, it does not matter by what name these persons call themselves.

Ratification.

§ 13. By-laws informally adopted may be subsequently ratified, and although there is no record of adoption, such ratification may be proved by the usage and acts of the corporation and parties dealing with it.[12] Thus, where the only by-laws ever adopted by a corporation are found properly recorded on the books kept by the trustees, and have been used, acted upon, and referred to as by-laws of

10 People v. Sterling Mfg. Co. (1876) 82 Ill. 460.

11 State Savings Ass'n v. Nixon-Jones Printing Co. (1887) 25 Mo. App. 642.

12 Lockwood v. Mechanics' Nat. Bank (1869) 9 R. I. 335. Sixty years' usage was considered by Lord Mansfield to be sufficient evidence of a by-law. Perkin v. Cutlers' Co. (1765) 2 Selw. N. P. (13th Ed.) 1183. Four years' acquiescence has been held in New York to amount to a ratification. Kent v. Quicksilver Mining Co. (1879) 78 N. Y. 159, 184.

the corporation both by the trustees and the stockholders for many years, they would be considered as regular by-laws of the corporation, though they were adopted by the stockholders instead of the directors.[13] And a by-law of a *de facto* corporation which had been acquiesced in and acted upon for more than eleven years by all the stockholders and officers will be presumed to have been duly enacted.[14] The adoption by a supreme lodge of an unauthorized by-law enacted by a subordinate board of control renders such by-law effective.[15] But where the statute authorizes the adoption of by-laws after organization, by-laws prepared and signed by the stockholders before organization are inoperative.[16]

Quorum.

§ 14. Where the directors are empowered to pass by-laws, such power may be exercised by a majority of the directors at a regularly or legally called meeting where a quorum is present.[17] Thus, where a charter authorizes the president and directors to adopt by-laws, they may be adopted at a meeting attended only by the president and a quorum of the directors.[18] And by-laws adopted

[13] State v. Curtis (1874) 9 Nev. 335; Hagerman v. Ohio B. & S. Ass'n (1874) 25 Ohio St. 186.

[14] Marsh v. Mathias (1899) 19 Utah, 350, 56 Pac. 1074.

[15] Supreme Lodge, K. of P., v. Kutscher (1899) 179 Ill. 340, 53 N. E. 620.

[16] Vercoutere v. Golden State Land Co. (1897) 116 Cal. 410, 48 Pac. 375.

[17] Lockwood v. Mechanics' Nat. Bank (1869) 9 R. I. 335.

[18] Cahill v. Kalamazoo Mut. Ins. Co. (1845) 2 Doug. (Mich.) 137, 43 Am. Dec. 461.

at a meeting of directors, at which only a quorum is present, are admissible in evidence under an allegation in the pleadings that they have been adopted by the whole board, since such by-laws regularly passed by a quorum of the directors are the act of the whole board.[19]

Persons present and not voting.

§ 15. Where by-laws are passed by the corporators at a general meeting, if those persons, having the right and opportunity to vote, refuse to exercise such right, and witness without objection the passage of a by-law by the usual mode of voting, counting, and declaring, the objection that such by-law was passed by an insufficient vote, by reason of failure to count those not voting as present, cannot be raised by any of those who were present, since by refusing to vote, and neglecting to make known their objection, they virtually sanction the acts of those who voted, and thus waive all objection to their validity.[20] It has also been held that a member of a mutual insurance company cannot question the validity of by-laws under which he became a member on the ground that they were not regularly adopted.[21]

Adoption outside state—Implied adoption.

§ 16. The adoption of a by-law, being in the nature of

[19] Cahill v. Kalamazoo Mut. Ins. Co. (1845) 2 Doug. (Mich.) 137, 43 Am. Dec. 461. See post, § 158.

[20] Richardson v. Union Congregational Soc. (1877) 58 N. H. 188.

[21] Pfister v. Gerwig (1890) 122 Ind. 567, 23 N. E. 1041. See, also, Morrison v. Dorsey (1877) 48 Md. 461.

a corporate act,[22] cannot be made outside of the state in which the corporation is incorporated.[23] Where a corporation has formally adopted a written code of by-laws, the existence of other by-laws will not be implied from its custom or usage.[24] But evidence of a custom of doing business in an association whose constitution and all rights and duties under it rest in agreement, and not upon an act of incorporation, is admissible to show consent or acquiescence in an actual modification of the by-laws.[25]

Amendment.

§ 17. The power to amend by-laws is as broad as the power to enact them.[26] An amendment or alteration is simply the enactment of a new by-law in relation to the same subject-matter. When the corporation adopts the by-laws, they can be amended only by the corporation itself; when adopted by the directors, the directors may amend them.[27] In the absence of the usual provision for

[22] In re Klaus (1886) 67 Wis. 405.

[23] Mitchell v. Vermont Copper Mining Co. (1876) 40 N. Y. Super. Ct. 413. It may be questioned, however, whether this would be true under statutes which, like those of Colorado, allow the directors to adopt by-laws, and also provide that directors' meetings may be held outside the state. But this point has not been expressly decided.

[24] District Grand Lodge v. Cohn (1886) 20 Ill. App. 344.

[25] Henry v. Jackson (1865) 37 Vt. 431.

[26] Under the Illinois loan association act of 1879, requiring a copy of the by-laws to be made part of the certificate of organization, which must be recorded, it was held that a loan association was without power to amend its by-laws. Fritze v. Equitable B. & L. Soc. (1900) 186 Ill. 183, 57 N. E. 873.

[27] Heintzelman v. Druids' Relief Ass'n (1888) 38 Minn. 138, 36 N.

the amendment of the by-laws at some specified time upon special notice, a majority may amend at any corporate meeting.[28] When the by-laws provide how they may be amended, a member is not affected by a change made in any other way.[29] Hence, where the by-laws require notice to members of amendments, a member is not bound by action taken under an amendment of which he is not shown to have had notice.[30]

Express repeal.

§ 18. What has been already said in regard to the amendment of by-laws is also applicable to the subject of their repeal. The power that can adopt by-laws may

W. 100. In the case of Stevens v. Davison (1868) 18 Grat. (Va.) 819, it was held that, where one of the by-laws of the corporation provided that certain contracts should not be made, except the same be approved by a majority of the stockholders, and another by-law gave the directors power to alter or amend any of the by-laws, the directors had no authority to alter the former by-law, since it was intended as a limitation of their power. The report does not state who passed these by-laws, but it is difficult to reconcile this decision with the prevailing current of authority.

[28] Scanlan v. Snow (1894) 2 App. D. C. 137.

[29] Mutual A. & I. Soc. v. Monti (1896) 59 N. J. Law, 341, 36 Atl. 666; Corley v. Travelers' Protective Ass'n (1900) 105 Fed. 854. But see Fee v. National Masonic Acc. Ass'n (1900) 110 Iowa, 271, 81 N. W. 483.

[30] Northwestern Life Assur. Co. v. Erlenkoetter (1900) 90 Ill. App. 99; Metropolitan Safety Fund Acc. Ass'n v. Windover (1891) 137 Ill. 417, 27 N. E. 538. For a discussion of the effect upon members of a subsequent alteration or amendment of the by-laws, see chapter 5, § 118 et seq.

repeal them.[31] Any meeting of persons authorized to enact by-laws can repeal such by-laws by a majority vote, and even a by-law requiring a two-thirds vote of the members present to alter or amend the by-laws of a corporation may itself be altered, amended, or repealed by a majority vote of the same power that enacted it.[32]

Implied repeal.

§ 19. In some cases it has been held that a by-law formally adopted by the directors may be repealed by a course of conduct by them inconsistent with such by-law.[33] Thus, in a case where the directors had power to make by-laws, which were to be entered in a book and signed by three directors, and one of the by-laws so made by them prohibited the corporation from taking a transfer of shares of stock in other companies, it was held that a resolution of the directors to have certain shares, held by the corporation as security, transferred to its name, abro-

[31] Bank of Holly Springs v. Pinson (1880) 58 Miss. 421; Rex v. Ashwell (1810) 12 East, 22. There may be possible exceptions to this rule under the provisions of peculiar statutes. Thus, the Illinois statutes provide that, in case of corporations not organized for pecuniary profit, the trustees or directors may make by-laws, and that the by-laws made by them may be modified, altered, or amended by the members at any annual meeting. Under this statute it would seem that a by-law passed by the directors, and then amended by the members at the annual meeting, could not thereafter be repealed by the directors, since that would, in effect, allow the directors to override the members in regard to a matter placed by the statute within the members' control. But the point has not yet been adjudicated.

[32] Richardson v. Union Congregational Soc. (1877) 58 N. H. 189.

[33] Bank of Holly Springs v. Pinson (1880) 58 Miss. 421.

gated the by-law, although such resolution was not signed or entered as a by-law.[34] And where a corporation whose by-laws declared that the corporation should have a lien on the stock of its stockholders to secure any debts such stockholders might owe the corporation, and directed that the certificates of stock should contain a notice of such by-law, it was held that the issuance of certificates of stock which contained no notice of the by-law constituted a repeal of the by-law.[35] An amendment reducing the number of directors necessary to constitute a quorum from four to three does not, by implication, repeal another by-law which required a vote of two-thirds of the directors to suspend certain officers.[36] Nor is a by-law repealed by the adoption of a new constitution making no reference to by-laws.[37]

Waiver—Provision in by-law against waiver.

§ 20. Corporations may waive by-laws enacted for their own convenience, and not based on any statutory or charter limitation,[38] even when the by-law itself provides against waiver.[39] A waiver of a by-law is in effect a

[34] In re Asiatic Banking Corporation (1869) L. R. 4 Ch. 252.

[35] Bank of Holly Springs v. Pinson (1880) 58 Miss. 438.

[36] Stockton v. Harmon (1893) 32 Fla. 312, 13 So. 833.

[37] Herman v. Plummer (1898) 20 Wash. 363, 55 Pac. 315.

[38] Swedish Christian Mission Soc. v. Lawrence (1900) 79 Minn. 124, 81 N. W. 756; Currier v. Continental Life Ins. Co. (1873) 53 N. H. 538; McKenney v. Diamond State Loan Ass'n (1889) 8 Houst. (Del.) 557, 18 Atl. 905; Underhill v. Santa Barbara Land, Bldg. & Imp. Co. (1892) 93 Cal. 300, 28 Pac. 1049; Wiberg v. Minnesota Scandinavian Relief Ass'n (1898) 73 Minn. 297, 76 N. W. 37.

[39] Supreme Tent, K. of M., v. Volkert (1900) 25 Ind. App. 627, 57 N. E. 203.

repeal of such by-law in a particular case, and it logically follows that the power to repeal includes the power to waive. If the directors have the power to pass by-laws, they may by their conduct waive such by-laws. Thus, where the directors of a mutual fire insurance company issue a policy in violation of the by-laws, the policy is not therefore void, since the issuance of the policy constitutes a waiver of the by-laws;[40] and this is true, even though the policy contains an express reference to the by-laws.[41] In such cases the insurance company cannot set up as against the policy the by-law which it has waived,[42] but the members' rights are to be measured by the terms of the policy itself.[43]

Same—By-law relating to transfer of stock.

§ 21. Where a by-law required the consent of the directors to a transfer of stock by any stockholder[44] who was indebted to the company. but in the practice of the company such cases were never brought before the board, it was held that a transfer by such a stockholder, made

[40] Union Mut. Fire Ins. Co. v. Keyser (1855) 32 N. H. 313, 64 Am. Dec. 375; Campbell v. Merchants' & Farmers' Mut. Fire Ins. Co. (1858) 37 N. H. 35, 72 Am. Dec. 324.

[41] Fitzgerald v. Equitable R. F. Life Ass'n (1888) 3 N. Y. Supp. 214. But see International B. & L. Ass'n v. Abbott (1892) 85 Tex. 220, 20 S. W. 118.

[42] Susquehanna Mut. Fire Ins. Co. v. Elkins (1889) 124 Pa. St. 484, 17 Atl. 24.

[43] Davidson v. Old People's Mut. Ben. Soc. (1888) 39 Minn. 303, 39 N. W. 803.

[44] Morrison v. Wisconsin O. F. Mut. Life Ins. Co. (1884) 59 Wis. 162.

without such consent, but in the presence of the secretary, according to the usage of the company, was good as against the company.[45] Where a by-law provides that stock shall not be transferred until entered in a certain book, the corporation, by failing to keep such a book, waives the by-law.[46] And the refusal of a corporation to enter a transfer of stock on its books is a waiver of a by-law requiring such entry in order to transfer title.[47] Where by-laws made by the directors prescribe what notice must be given for meetings of the directors, a contract entered into by the directors in behalf of the corporation with a third person at a meeting not so called is not invalid, since the conduct of the directors in meeting without such notice, and entering into a contract at such meeting, constitutes a waiver of that by-law so far as that contract is concerned.[48]

Same—Same.

§ 22. In a recent case in Rhode Island, it appeared that the charter of a corporation provided that its shares

[45] Chambersburg Ins. Co. v. Smith (1849) 11 Pa. St. 120. But in some of the English colonial courts it is held that, as between a corporation and its members, a course of dealing at variance with its by-laws, for whatever length of time pursued or acquiesced in, is of no force as a waiver of the by-laws. Watson v. Bendigo Permanent Land & Bldg. Soc. (1884) 10 Vict. Law R. 26; Sperry v. Dransfield (1884) 2 New Zealand (S. C.) 319.

[46] Chemical Nat. Bank v. Colwell (1892) 132 N. Y. 250, 30 N. E. 644; Isham v. Buckingham (1872) 49 N. Y. 216, 221.

[47] Robinson v. National Bank of New Berne (1884) 95 N. Y. 637.

[48] Samuel v. Holladay (1869) 1 Woolw. 400, Fed. Cas. No. 12,288, 1 Am. Corp. Cas. 139; Samuels v. Holliday (1868) McCahon (Kan.) 214.

should be transferred in such manner as should be prescribed by its by-laws. The by-laws provided that the treasurer should keep a book, which was made a part of the corporate records, in which the names of all the stockholders, and the number of shares held by each, should be kept. The certificate of stock, prescribed by the by-laws, contained the provision: "Transferable only in person or by attorney on the transfer books of the corporation, and on the surrender of this certificate." There was no by-law prescribing how stock should be transferred, and no transfer book was kept except the certificate book, which contained marginal stubs, showing the new and old certificate numbers, the names of the persons from whom and to whom the stock was transferred, the date of the transfer, and receipt for the new certificate, signed by the transferee. To these marginal stubs the surrendered certificates were attached. It was shown that this was the uniform system of transfer followed by the company, and the holder of the new certificate was recognized by the corporation as a stockholder. The court held that by permitting transfers, in the manner stated, the company waived the requirements of transfer "in person or by attorney," and that since the corporation was competent to make such waiver, the entries of the transfers on its certificate book were sufficient to vest the legal title to the stock in the transferees, and bound the corporation and its creditors.[49] And where the owner of stock

[49] American Nat. Bank v. Oriental Mills (1891) 17 R. I. 551, 23 Atl. 795. See, also, Chemical Nat. Bank v. Colwell (1892) 132 N. Y. 250,

has assigned and transferred his certificate, and the corporation, without valid reason, refuses to make the transfer, this amounts to a waiver of the requirements as to transfer.[50] Of course the by-law of an insurance association requiring the surrender of the old certificate when a member changes his beneficiary may be waived where the original certificate is lost or destroyed.[51]

Same—By-law relating to term of officers.

§ 23. It has been held in New York that where a corporation whose by-laws provided that its officers and clerks should hold office during the pleasure of the board of directors entered into a contract engaging a clerk for the term of one year, and then discharged him without cause before the year expired, the clerk had a right of action against the corporation for his salary for the unexpired term, since the action of the board in employing him for a specified term constituted a waiver of the by-law.[52] But in a case in Louisiana, where the facts were very similar, except that the person employed was an officer of the corporation instead of a clerk, it was held that he had no right of action, since he was presumed to know the by-laws, and to be bound by them.[53] And a similar decision has been rendered in North Carolina.[54]

30 N. E. 644; Isham v. Buckingham (1872) 49 N. Y. 216, 222; Stewart v. Walla Walla P. & P. Co. (1889) 1 Wash. St. 521, 20 Pac. 605; Richmondville Mfg. Co. v. Prall (1833) 9 Conn. 487.

[50] Robinson v. National Bank of New Berne (1884) 95 N. Y. 637.

[51] Delaney v. Delaney (1898) 175 Ill. 187, 51 N. E. 961.

[52] Martino v. Commerce Fire Ins. Co. (1881) 47 N. Y. Super. Ct. 520. See Moyer v. East Shore Terminal Co. (1894) 41 S. C. 300, 19

Same—By-law relating to powers of corporation.

§ 24. It has been held that a resolution of the directors of a corporation, ordering certain stock held by the corporation as security for a loan to be transferred to the corporation, was a waiver of a by-law which forbade the corporation to acquire shares in other companies,[55] and that the issuance of stock certificates containing no reference to the by-laws was a waiver of a by-law which provided that debts due from the stockholders to the corporation should be a lien on their stock, and that the certificates of stock should contain notice of such by-law.[56] Recognizing as a member of a corporation a person who has inadvertently failed to sign the constitution, as required by a by-law, is a waiver of such by-law.[57]

Same—By-law relating to admission of member.

§ 25. By admitting a member who is eligible under the charter, but not under the by-laws, the latter are

S. E. 651, 25 L. R. A. 48; Trawick v. Peoria & Ft. C. St. Ry. Co. (1896) 68 Ill. App. 156. But a contract engaging an employe for life is not justified by a by-law authorizing the president and actuary "to appoint, remove, and fix the compensation of each and every person, except agents, employed by the company." Carney v. New York Life Ins. Co. (1900) 162 N. Y. 453, 57 N. E. 78, 49 L. R. A. 471, 20 Nat. Corp. Rep. 822, affirming (1897) 45 N. Y. Supp. 1103, 19 App. Div. 160.

[53] Hunter v. Sun Mut. Ins. Co. (1874) 26 La. Ann. 13.

[54] Ellis v. North Carolina Inst. for Deaf & Dumb & Blind (1873) 68 N. C. 423, 5 Am. Corp. Cas. 591.

[55] In re Asiatic Banking Corporation (1869) L. R. 4 Ch. 252.

[56] Bank of Holly Springs v. Pinson (1880) 58 Miss. 438.

[57] State v. Sibley (1879) 25 Minn. 387.

waived.[58] An insurance association may waive a by-law requiring a medical examination of the applicants.[59] The general manager of a society may waive compliance with the by-laws on the part of members;[60] but it has been held that an officer has no authority to waive any by-law relating to the substance of the contract between the member and the association.[61] Of course a member may waive compliance with by-laws enacted for his benefit.[62] The fact that oral contracts of insurance are forbidden by the by-laws does not render a settlement under such a contract *ultra vires*, since the provision may be waived.[63] So, also, by-laws of a mutual benefit society requiring any alteration of the contract of membership to be in writing, and signed by the treasurer, and requiring both the member insured and the beneficiary to sign the form of assignment, may be waived.[64] But where the by-laws provide that all notes of the company shall be signed by the president and indorsed by the secretary, the fact that the secretary has previously indorsed two notes without the

[58] Wiberg v. Minnesota Scandinavian Relief Ass'n (1898) 73 Minn. 297, 76 N. W. 37.

[59] Watts v. Equitable Mut. Life Ass'n (Iowa, 1900) 82 N. W. 441.

[60] Burlington Voluntary R. D. v. White (1894) 41 Neb. 547, 59 N. W. 747.

[61] Harvey v. Grand Lodge, A. O. U. W. (1892) 50 Mo. App. 472.

[62] State v. Cincinnati C. of C. & M. Exchange (1897) 4 Ohio N. P. 244; Miller v. United States Grand Lodge (1897) 72 Mo. App. 499.

[63] Stoehlke v. Hahn (1895) 158 Ill. 79, 42 N. E. 150.

[64] Anthony v. Massachusetts Ben. Ass'n (1893) 158 Mass. 322, 33 N. E. 577.

president's signature is not sufficient to show a waiver of the by-law.[65]

Waiver by insurance companies—By-law as to proof of insurance loss.

§ 26. Most of the decisions relating to waiver arise in litigation over insurance policies. Thus it has been held that where a by-law of a mutual benefit association provided that, upon receipt of notice of the death of a member, the secretary should immediately forward to the member's representatives the proper blanks for proof of death, with full instructions how to make such proof, the failure of the association to send such blanks and instructions, when requested so to do, constituted a waiver of the requirement of proof of death,[66] even though it was claimed that the deceased had forfeited his rights, and his certificate had been canceled.[67] And a by-law providing for submission of claims to a subordinate lodge, and for an appeal to a superior lodge, is waived if the subordinate lodge defer action until it is too late to take an appeal within the time allowed by the by-law.[68] A forfeiture of an insurance policy for violation of a by-law is waived by de-

[65] Davis v. Rockingham Inv. Co. (1892) 89 Va. 290, 15 S. E. 547.

[66] Covenant Mut. Ben. Ass'n v. Spies (1885) 114 Ill. 463, 2 N. E. 482; Order of Chosen Friends v. Austerlitz (1897) 75 Ill. App. 74.

[67] Covenant Mut. Ben. Ass'n v. Spies (1885) 114 Ill. 463, 2 N. E. 482; Payn v. Rochester M. R. Soc. (1885) 17 Abb. New Cas. (N. Y.) 53; Daniher v. Grand Lodge, A. O. U. W. (1894) 10 Utah, 110, 37 Pac. 245.

[68] Brotherhood of Railroad Trainmen v. Newton (1898) 79 Ill. App. 500.

manding proofs of loss without objecting on account of such violation.[69]

Same—Same.

§ 27. The failure to insert in the proofs of loss certain details required by the by-laws is waived by receiving the proofs without objection on account of the absence of such details;[70] and the requirement of the by-laws that formal proof of loss shall be given is waived by the company when its officers examine the premises for themselves, and inform the insured that no further proof of loss is necessary.[71] Insuring in one class of risks property which, according to the by-laws, is properly insurable only in another class, constitutes a waiver of the by-law.[72] But a by-law requiring the insured, before the delivery of any policy, to pay such premium, and give such deposit note as the president and directors shall determine, is not waived by the fact that, after the time for paying the premium had elapsed, the president and secretary requested the insured to pay the premium, without suggesting that the policy had become forfeited.[73]

Same—By-law as to designation of beneficiary.

§ 28. The requirement in the by-laws of a mutual bene-

[69] Jerdee v. Cottage Grove Fire Ins. Co. (1890) 75 Wis. 353, 44 N. W. 636.

[70] Underhill v. Agawam Mut. Fire Ins. Co. (1850) 6 Cush. (Mass.) 440.

[71] Priest v. Citizens' Mut. Fire Ins. Co. (1862) 3 Allen (Mass.) 602.

[72] Union Mut. Fire Ins. Co. v. Keyser (1855) 32 N. H. 313, 64 Am. Dec. 375.

[73] Brewer v. Chelsea Mut. Fire Ins. Co. (1859) 14 Gray (Mass.) 203.

fit association that beneficiaries must be designated in writing is waived by the acceptance and notation of an oral designation with the statement that the member need do nothing more.[74] A life insurance company whose policy ran to the "son-in-law of the assured, or said beneficiary's heirs or assigns," and which consented to an assignment thereunder, is estopped from claiming that its policy is void under a by-law providing that the beneficiary must be a husband, wife, family, heirs, legal assignee, or creditor of the assured.[75] Before the death of a member, the association for whose benefit alone the rules governing changes of beneficiaries are made may waive compliance therewith, and thus validate attempts to change beneficiaries which would be ineffectual under the rules.[76] But after the policy holder's death, the association cannot waive the requirements of the by-laws as to the mode of changing the beneficiary.[77] Where rights have attached under the rules by the death of the insured, an action by which the society interpleads rival claimants to the fund does not constitute a waiver upon its part of the rules.[78] And the fact that a benefit society, in ignorance of the true age of the deceased, attended his funeral in uniform, does not waive a defense based upon his misrepre-

[74] Hanson v. Minnesota Scandinavian Relief Ass'n (1894) 59 Minn. 123, 60 N. W. 1091.

[75] Smith v. People's Mut. Ben. Soc. (1892) 19 N. Y. Supp. 432.

[76] Grand Lodge, A. O. U. W., v. Reneau (1898) 75 Mo. App. 402.

[77] McLaughlin v. McLaughlin (1894) 104 Cal. 171, 37 Pac. 865.

[78] Smith v. Harman (1899) 28 Misc. Rep. 681, 59 N. Y. Supp. 1044.

sentation as to age.[79] Where the beneficiary was ignorant of a by-law requiring suit on a policy to be brought within thirty days after the refusal of the company to pay a claim, and the officer refused a request for a copy of the by-laws, stating in reply to an inquiry as to the time in which suit might be brought, "three months" (the maximum limit in any case), the thirty days' limitation was waived.[80]

Same—By-law as to payment of assessments.

§ 29. A by-law requiring payment of assessments within sixty days after notice is waived by accepting payment after the expiration of that period, and giving notice of further assessments.[81] And where a subordinate court of a benefit association was authorized by the by-laws to extend the time within which a member might pay an assessment, and did so, such an extension amounted to a waiver of the right to forfeit the member's certificate for nonpayment.[82] The provisions of the by-laws of a fraternal society depriving a member in arrears from participation in sick benefits is waived by the acceptance of a donation of the delinquent dues by other members of the society.[83] Where an assessment was paid in accordance with a cer-

[78] Marcoux v. Society of Beneficence St. J. B. (1898) 91 Me. 250, 39 Atl. 1027.

[80] Metropolitan Acc. Ass'n v. Froiland (1896) 161 Ill. 30, 43 N. E. 766.

[81] Moore v. Order of Railway Conductors (1894) 90 Iowa, 721, 57 N. W. 623. And see Metropolitan Safety Fund Acc. Ass'n v. Windover (1891) 137 Ill. 417, 27 N. E. 538.

[82] Flicek v. High Court, C. O. of F. (1900) 90 Ill. App. 344.

[83] Bartling v. Edwards (1899) 84 Ill. App. 471.

tain method, sanctioned by the lodge, but different from that prescribed by the by-laws, the association is estopped from declaring a forfeiture.[84] Hence, where the by-laws of a fraternal order provided that certificates should be void unless dues were promptly paid, but it was the custom to permit members to pay dues when it suited their ability or convenience, and a policy was uncancelled at the death of the insured, and thereafter, with knowledge of the facts, the officers of the local lodge, charged with the duty of collecting and transmitting assessments to the parent lodge, demanded and received the overdue assessments, the parent association was held to be estopped from claiming a forfeiture because the assessments were not paid when due.[85] But a by-law declaring that, if a member is in arrears when taken sick, he shall not be entitled, by paying such arrears, to benefits during his illness, is not waived by the acceptance of such arrears.[86] And where the by-laws provide for forfeiture, without notice, for delinquency, receipt of the payments in default, on condition that the money is held subject to the member's reinstatement, and the subsequent return of the money to the member upon his failure to furnish a health certificate, do not constitute a waiver.[87] Where an association disregards its rules as to payment of dues, and fails to forfeit the membership for nonpayment thereof, and

[84] National Gross Logedes, U. O. T., v. Jung (1896) 65 Ill. App. 313.

[85] Supreme Tribe of Ben Hur v. Hall (1900) 24 Ind. App. 316, 56 N. E. 780.

[86] Nagel v. Glasburger (1890) 10 N. Y. Supp. 503.

[87] Bowlin v. Sovereign Camp of W. W. (Minn.; 1901) 85 N. W. 160.

afterwards accepts the dues, it cannot set up the rules against the member's recovery.[88] Where the by-laws of an unincorporated association provide that, if the dues of its members should fall below a certain sum for three successive months, it should be disbanded, that contingency does not *ipso facto* terminate the association, since such a by-law may be waived.[89]

[88] Piquenord v. Libby (1879) 7 Mo. App. 564; Daniher v. Grand Lodge, A. O. U. W. (1894) 10 Utah, 110, 37 Pac. 245; Independent Order of Foresters v. Haggerty (1899) 86 Ill. App. 31; Lime City B. & L. Ass'n v. Black (1893) 136 Ind. 544, 35 N. E. 829.

[89] Atnip v. Tennessee Mfg. Co. (Tenn.; 1898) 52 S. W. 1093. For a discussion of the effect of repeal of by-laws, see chapter 5.

CHAPTER III.

SUBJECT-MATTER OF BY-LAWS.

GENERAL PRINCIPLES.

REGULATION OF PARTICULAR SUBJECTS.

GENERAL PRINCIPLES.

General requisites—Conformity to law.

§ 30. In determining the validity of by-laws, consider-

ed in regard to their subject-matter, there are a few general principles that must be always kept in view.

The first is that a by-law must not be contrary to the law of the land; and by the law of the land is meant not only the statutory or written law, but also the constitution of the state and the principles and policy of the unwritten common law. Thus, a by-law which contravenes the policy of the law by imposing an undue restraint upon trade is clearly as illegal and null as if its adoption had been expressly forbidden by statute.

Same—Conformity to charter.

§ 31. The second principle is that by-laws must not conflict with the provisions of the charter or articles of association of the corporation. By-laws are intended to supplement the charter, and to provide for matters which the charter leaves indefinite. If they go beyond this, and attempt to change any provision, directly or indirectly contained in the charter, they are *ultra vires* and void.

Same—Reasonableness.

§ 32. The third principle is that by-laws must be reasonable. By this is not meant that they must be agreeable to every one, but simply that there must be nothing in their provisions contrary to judicial reason.

Same—Appropriateness.

§ 33. The fourth principle is that the subject-matter of by-laws must be germane to the objects for which the

corporation is formed. These four principles will now be considered in detail.

Conformity to law.

§ 34. By-laws must not be contrary to law.[1] They must conform not only to the constitution and laws of the state under which the corporation is organized, but also to the constitution and laws of the United States, so far as the same are applicable.[2] Thus, *ex post facto* by-laws are void as contrary to the constitution.[3] A by-law which operates to create usurious loans from the association to its members is void;[4] and a provision in the charter of a bank corporation authorizing the directors to make by-

1 Cunningham v. Alabama Life Ins. & T. Co. (1843) 4 Ala. 654; Kent v. Quicksilver Mining Co. (1879) 78 N. Y. 182; American Legion of Honor v. Perry (1886) 140 Mass. 592; Butchers' Ben. Ass'n (1860) 35 Pa. St. 151; Pulford v. Fire Department (1875) 31 Mich. 466; People v. Throop (1834) 11 Wend. (N. Y.) 186; Gordon v. Muchler (1882) 34 La. Ann. 606; King v. International B. L. & I. Union (1897) 170 Ill. 135, 48 N. E. 677; Trowbridge v. Hamilton (1898) 18 Wash. 686, 52 Pac. 328; Krecker v. Shirey (1894) 163 Pa. St. 534, 30 Atl. 440; Nevesley v. Webster (1755) 1 Ld. Keny. 243; In re Lurman (1895) 90 Hun (N. Y.) 303, 35 N. Y. Supp. 956; State v. Bank of Louisiana (1827) 5 Mart. (N. S.; La.) 327, 344.

2 Butchers' Ben. Ass'n (1860) 35 Pa. St. 151; Cunningham v. Alabama Life Ins. & T. Co. (1843) 4 Ala. 654.

3 Pulford v. Fire Department (1875) 31 Mich. 465.

4 Martin v. Nashville Bldg. Ass'n (1865) 2 Coldw. (Tenn.) 418; Herbert v. Kenton Bldg. & Sav. Ass'n (1875) 74 Ky. 296. See Building & Loan Ass'n v. Dorsey (1881) 15 S. C. 462. But a member of a building and loan association who has paid usurious interest on money borrowed therefrom may not recover it, being in pari delicto. Latham v. Washington B. & L. Ass'n (1877) 77 N. C. 145.

laws concerning the time, manner, and terms upon which discounts and deposits shall be made does not justify a by-law providing for loans by the bank at usurious interest.[5] It has been held in England that a by-law made by a church society providing that repairs to the parish church shall be made partly by one person and partly by another is void as being in contravention of the provision of the common law which imposes upon the church wardens the duty of keeping the church in repair.[6]

Same—Violation of statute.

§ 35. Where the act under which a benefit association is incorporated provides that a member may designate by will a beneficiary having no insurable interest in his life, a by-law prohibiting a member from doing so is invalid.[7] And where the constitution of the state provides that, in elections of directors, every stockholder shall have the right to vote for his stock, and that directors shall not be elected in any other way, a by-law of a railroad corporation allowing bondholders to vote for directors is void.[8] It has been held that, under the Illinois statutes, a building and loan association has no power to issue shares maturing at any fixed period.[9] A by-law asserting that stock-

[5] Seneca County Bank v. Lamb (1858) 26 Barb. (N. Y.) 595.

[6] Gosling v. Veley (1850) 12 Q. B. 347.

[7] Nelson v. Gibson (1901) 92 Ill. App. 595.

[8] Durkee v. People (1895) 155 Ill. 354, 40 N. E. 626.

[9] Wierman v. International B. L. & I. Union (1896) 67 Ill. App. 550; International B. L. & I. Union v. King (1897) 68 Ill. App. 640; Sullivan v. Spaniol (1898) 78 Ill. App. 125.

holders are not to be held to their constitutional liability is void.[10] Where the statute provides that loans shall be made to the highest bidder, a by-law providing for a minimum premium is invalid as creating usury;[11] but in the absence of a statute requiring competitive bidding for loans, such a by-law is valid.[12] Benefit associations cannot limit by by-laws the beneficiaries prescribed by statute.[13] Hence, where the statute provides that a member may bequeath his mortuary benefits, a by-law providing that, in case a member dies leaving no widow, children, or parents, the endowment shall go to the reserve fund of the society, is invalid.[14] Similarly, where the statute provides that such benefits may be payable to an affianced husband or wife, a by-law providing that they shall be payable only to kinsmen, and those dependent on the deceased is void.[15] The fact that some of the by-laws of a building association purport to authorize it to engage in transactions outside the scope of its legitimate business does not destroy the character of the association, where it does not appear that there has been any attempt to

[10] Wells v. Black (1897) 117 Cal. 157, 48 Pac. 1090.

[11] Iowa S. & L. Ass'n v. Heidt (1899) 107 Iowa, 297, 77 N. W. 1050. But see Orangeville Mut. S. F. & L. Ass'n v. Young (1880) 9 Wkly. Notes Cas. (Pa.) 251.

[12] Zenith B. & L. Ass'n v. Heimbach (1899) 77 Minn. 97, 79 N. W. 609.

[13] Wallace v. Madden (1897) 168 Ill. 356, 48 N. E. 181.

[14] Wolf v. District Grand Lodge No. 6 (1894) 102 Mich. 23, 60 N. W. 445.

[15] Wallace v. Madden (1897) 168 Ill. 356, 48 N. E. 181.

operate under such by-laws.[16] Where the constitution secures the right to inspect the company's books, a by-law providing that no stockholder shall have the right to inspect the books of the company without special authority from the board of directors is void.[17]

Under a statute providing that shares of stock shall be subject to a lien for unpaid installments to be enforced in a manner prescribed by the by-laws, a by-law providing for the forfeiture without sale of the shares is void, since a lien can only be enforced by sale.[18] It seems that a corporation which has passed an illegal by-law may be ousted from the exercise of the powers conferred by such by-law by information brought by the attorney general on the relation of one of the members of the corporation.[19]

Same—Modification of common-law rights.

§ 36. It is not true, however, that a by-law can never create rights or liabilities unknown to the common law, since, if this were the case, no valid by-laws could be created except such as announced the doctrines of the common law, and these by-laws would be, of course, unnecessary, as the law would be in force without them.[20] Thus it was said by Lord Chief Justice Campbell that "a by-

[16] Smith v. Southern B. & L. Ass'n (1900) 111 Ga. 811, 35 S. E. 707.

[17] State v. Citizens' Bank of Jennings (1899) 51 La. Ann. 426, 25 So. 318.

[18] Mueller v. Madison B. & L. Ass'n (1898) 11 S. D. 43, 75 N. W. 277.

[19] People v. Young Men's Father Matthew T. A. B. Soc., No. 1 (1879) 41 Mich. 67, 1 N. W. 931.

[20] State v. Tudor (1812) 5 Day (Conn.) 333.

law cannot be said to be inconsistent with the laws of this kingdom merely because it forbids the doing of something which might lawfully have been done before, or requires something to be done which there was no previous obligation to do; otherwise a nominal power of making by-laws would be utterly nugatory."[21] In other words, a by-law, like a contract, may create new rights and liabilities in addition to those created by law, but it cannot do away with or abrogate any right or obligation which the law has created. Thus, a by-law of a board of trade which provides that, on sales of grain in bulk on elevator receipts, the buyer shall pay the first ten days' storage, unless otherwise specified at the time of sale, is valid, although at common law the buyer would not be responsible, in the absence of any express promise to pay for storage charges that accrued before the sale.[22]

Same—Extension of statutory rights.

§ 37. In a case recently decided by a United States circuit court it appears that the company whose by-law was under consideration was incorporated in England for the purpose of operating mines in the United States. Its principal office was in London, but all its property except the furnishings of its London office was in the United States, and four-fifths of its capital stock was owned by Americans. A by-law of the company authorized a transfer of its property and business or a reorganization of the

[21] Reg. v. Edmonds (1855) 3 C. L. 902, 24 Law J. M. Cas. 124.

[22] Goddard v. Merchants' Exchange (1880) 9 Mo. App. 290, (1883) 78 Mo. 609.

company at a meeting of which at least one month's notice should be given to the stockholders. The English statutes allowed a reorganization of such a corporation to be effected at a meeting of which only fourteen days' notice need be given. The English stockholders and officers attempted to reorganize by complying with the terms of the English statute, regardless of the by-law, and a resolution to reorganize was passed at a meeting called on fourteen days' notice. The American stockholders, who did not receive this notice until after the meeting had been held, naturally objected to this high-handed proceeding, and carried the controversy into court, where it was held that the by-law did not conflict with the statute, but merely added to its requirements, and that the proceedings of the English stockholders were void for want of compliance with the requirements of the by-law.[23]

Conformity to charter.

§ 38. By-laws must conform to the charter.[24] That by-laws contrary to the charter of a corporation should be

[23] Brown v. Republican Mountain Silver Mines (1893) 55 Fed. 7.

[24] Hoblyn v. Rex (1772) 2 Brown Parl. Cas. 329; Rex v. Cutbush (1768) 4 Burrows, 2204; Rex v. Toppenden (1802) 3 East, 186; Commonwealth v. Fisher (1869) 7 Phila. (Pa.) 264; Presbyterian Assur. Fund v. Allen (1886) 106 Ind. 593; Bergman v. St. Paul Mut. Bldg. Ass'n (1882) 29 Minn. 278; Commonwealth v. Gill (1837) 3 Whart. (Pa.) 248; St. Luke's Church v. Mathews (1815) 4 Desaus. Eq. (S. C.) 578. "Upon the same principle, a by-law which restrains and limits the powers originally given to the governor by the founder himself, we think must be bad." Lord Chief Justice Tindal in Reg. v. Darlington Free Grammar School Governors (1844) 14 Law J. Q. B. 67. But see Great Falls Mut. Fire Ins. Co. v. Harvey (1864) 45 N. H. 292.

void follows naturally enough from the relations existing between the charter and the by-laws. The charter creates the corporation, the corporation creates the by-laws, hence for the by-laws to do away with the charter would be a sort of parricide. Therefore, a by-law conflicting with the charter of a corporation is of no more force than an unconstitutional act of the legislature. Where the charter expressly provides in what cases the company may make by-laws, its right to make by-laws is limited to the cases named in the charter.[25] Where the charter gives the general power to make by-laws, that general power is still understood to mean merely the right to pass by-laws not in conflict with the charter, which is the fundamental law of the corporation. Thus, where the charter of an insurance company authorizes it to insure property destroyed or damaged by fire, a by-law declaring that the company will be liable for losses on property burned or damaged by lightning cannot extend the company's liability to cases where property is merely damaged by lightning, without being burned, since no by-law of a corporation can enlarge its corporate powers.[26]

Same.

§ 39. So a benevolent association is without power to enlarge the class of beneficiaries prescribed by its charter.[27] Of course a corporation may by by-law impose on delinquent members fines that are less than those pre-

[25] Child v. Hudson's Bay Co. (1723) 2 P. Wms. 208.

[26] Andrews v. Union Mut. Fire Ins. Co. (1854) 37 Me. 256.

[27] Di Messiah v. Gern (1894) 10 Misc. Rep. 30, 30 N. Y. Supp. 824.

scribed in the charter.[28] But a by-law inflicting forfeiture for a lesser amount of arrears than prescribed by the charter is invalid.[29] Yet in a case where it was conceded that an incorporated company was not empowered by its charter to forfeit the shares of stockholders for nonpayment of installments for the purchase price of the stock, it was held, nevertheless, that where, after the organization of the company, a by-law was adopted by the stockholders declaring such forfeiture, and this by-law was acquiesced in by the stockholders, a stockholder whose stock had been forfeited, and whose certificate of stock contained a printed copy of the by-law, could not recover, on the winding up of the company, the amount paid on his stock.[30]

Where the charter declares what persons shall be eligible to the office of president or other head of the corporation, a by-law making other persons eligible to the office is invalid.[31] An exception to the rule requiring by-laws to conform to the charter exists where such conformity would result in the violation of a statute. Thus, where the charter of a corporation contains a provision repugnant to the statute upon the same subject, the association may adopt a valid by-law in harmony with the statute, although it be inconsistent with the charter.[32]

[28] Dupuy v. Eastern B. & L. Ass'n (1896) 93 Va. 460, 25 S. E. 537.

[29] Sherry v. Operative Plasterers' Mut. Union (1891) 139 Pa. St. 470, 20 Atl. 1062.

[30] Lesseps v. Architects' Co. (1849) 4 La. Ann. 316.

[31] Rex v. Bumstead (1831) 2 Barn. & Adol. 699.

[32] Booz' Appeal (1885) 109 Pa. St. 592.

Reasonableness.

§ 40. By-laws must be reasonable.[33] This rule, however, does not mean that an inconvenient or troublesome by-law is always void.[34] And when its inconvenience is in issue, "in order to avoid a by-law upon the ground of its being unreasonable because of some inconvenience that may result from it, it should appear to be a probable inconvenience, for one can hardly predicate of any law that some possible inconvenience may not result from it."[35]

By-laws which do not apply to all members alike are unreasonable, and therefore invalid,[36] especially when they contain a forfeiture.[37] In order to be reasonable, by-laws must be certain, must be directed to all within the sphere of their operation, and must operate equally,[38] since the

[33] Commissioners v. Gas Co. (1849) 12 Pa. St. 318; Kent v. Quicksilver Mining Co. (1879) 78 N. Y. 182; Commonwealth v. Gill (1837) 3 Whart. (Pa.) 248; People v. Throop (1834) 11 Wend. (N. Y.) 186; St. Luke's Church v. Mathews (1815) 4 Desaus. Eq. (S. C.) 578; State v. Bank of Louisiana (1827) 5 Mart. (N. S.; La.) 327, 344; Allnutt v. Subsidiary High Court of Foresters (1886) 62 Mich. 110, 28 N. W. 802; Graham v. House B. & L. Ass'n (Tenn. Ch. App.; 1898) 52 S. W. 1011. See Falcone v. Societa Sarti Italiani di Muntuo Soccorso (1899) 61 N. Y. Supp. 873, as to estoppel.

[34] Weatherly v. Medical & Surgical Soc. (1884) 76 Ala. 567.

[35] Lord Chief Justice Ellenborough in Rex v. Ashwell (1810) 12 East, 22.

[36] People v. Young Men's Father Matthew T. A. B. Soc., No. 1 (1879) 41 Mich. 67, 1 N. W. 931, 6 Am. Corp. Cas. 626.

[37] Budd v. Multnomah Street Ry. Co. (1887) 15 Or. 413.

[38] Goddard v. Merchants' Exchange (1880) 9 Mo. App. 295; Dornes v. Supreme Lodge, K. of P. (1898) 75 Miss. 466, 23 So. 191; Baltimore B. & L. Ass'n v. Powhatan Imp. Co. (1898) 87 Md. 59, 39 Atl.

power of making by-laws, in whomsoever it may reside, is in trust for the benefit of all the corporators.[39] Thus, a by-law excluding one of the directors from all knowledge of the corporation's transactions is clearly invalid and void.[40] The rule that by-laws must be reasonable in order to be valid does not apply to the by-laws of voluntary unincorporated societies,[41] since the courts never interfere to control the enforcement of the by-laws of a merely voluntary association created for other than business purposes,[42] so long as they are not illegal or contrary to public policy.[43]

Same.

§ 41. A by-law, in order to be reasonable, should also be for the common benefit of all the corporators.[44] Any by-law that disturbs a vested right is not reasonable;[45] neither is one that, without authority, interferes with the dealings of third persons, and prevents the purchase and transfer of property.[46] A by-law enacted by the trus-

274; Wierman v. International B. L. & I. Union (1896) 67 Ill. App. 550. But see Shackelford v. Supreme Conclave, K. of D. (1896) 98 Ga. 295, 26 S. E. 746.

[39] Commonwealth v. Gill (1837) 3 Whart. (Pa.) 248.

[40] People v. Throop (1834) 12 Wend. (N. Y.) 186.

[41] Elsas v. Alford (1878) 1 City Ct. Rep. (N. Y.) 123. But see Fritz v. Muck (1881) 62 How. Pr. (N. Y.) 69.

[42] Robinson v. Yates City Lodge (1877) 86 Ill. 599; People v. Board of Trade (1875) 80 Ill. 137. See Austin v. Searing (1857) 16 N. Y. 112.

[43] Conriff v. Jamour (1900) 31 Misc. Rep. 729, 65 N. Y. Supp. 317.

[44] Commissioners v. Gas Co. (1849) 12 Pa. St. 318.

[45] Kent v. Quicksilver Mining Co. (1879) 78 N. Y. 182.

[46] Driscoll v. West Bradley & C. M. Co. (1874) 59 N. Y. 102.

tees of a corporation will not be set aside on the suit of a stockholder on the ground that some of its provisions are unreasonable and in excess of the powers of the trustees, so long as the trustees' acts are reasonable and within their powers.[47] And where a loan association is empowered by charter to impose fines on members for nonpayment of assessments, but the charter is silent as to the extent of the power, the validity of the by-laws will be tested by their reasonableness.[48]

Same—Illustrations of reasonable by-laws.

§ 42. The following by-laws have been held by the courts to be reasonable: A by-law providing that when a third or more of the directors are present at a regular meeting they may adjourn the meeting to another day;[49] a by-law of a board of trade making the purchaser of grain in bulk on elevator receipts responsible for storage charges accruing before the sale;[50] a by-law of a board of trade providing for the expulsion of members for breach of any contract;[51] a by-law imposing a fine upon a member who refuses to accept an election to office;[52] a by-law of a news association forbidding its members from receiving or publishing the regular news

[47] Burden v. Burden (1899) 159 N. Y. 287, 54 N. E. 17.

[48] Vierling v. Mechanics' & Traders' S., L. & B. Ass'n (1899) 179 Ill. 524, 53 N. E. 979.

[49] Smith v. Law (1860) 21 N. Y. 296.

[50] Goddard v. Merchants' Exchange (1880) 9 Mo. App. 290, 78 Mo. 609.

[51] Dickenson v. Chamber of Commerce (1871) 29 Wis. 45; People v. Chicago Board of Trade (1867) 45 Ill. 115.

[52] Vintners' Co. v. Passey (1757) 1 Burrows, 235.

dispatches of other associations;[53] a by-law of a board of trade forbidding its members from forming a public market near the association's rooms;[54] a by-law of a mutual benefit society depriving a member of sick benefits unless he furnishes the sick committee with a doctor's certificate;[55] a by-law of a charitable asylum forbidding the inmates from leaving the premises without permission;[56] a by-law of a mutual benefit society providing that no benefits shall be paid when a member's death is caused by intemperance or debauchery;[57] a by-law of a beneficial association providing that members engaging in the saloon business shall forfeit all benefits;[58] a by-law of a stock exchange providing that the seller of shares shall be responsible for the genuineness and regularity of all documents delivered, and for such dividends as may be received, until reasonable time has been allowed the transferee to lodge such documents for verification and registration;[59] a regulation of an incorporated agricultural association providing that stockholders shall have one vote for each share held by them up to ten shares, and fixing the proportion which their votes shall bear to their share above that number;[60] a by-law of a library company closing the library

[53] Matthews v. Associated Press (1893) 136 N. Y. 333, 32 N. E. 981; affirming (1891) 15 N. Y. Supp. 887. But see post, § 77.

[54] State v. Milwaukee Chamber of Commerce (1879) 47 Wis. 683.

[55] Harrington v. Workingmen's Ben. Ass'n (1883) 70 Ga. 340.

[56] People v. Sailors' Snug Harbor (1868) 54 Barb. (N. Y.) 532.

[57] St. Mary's Ben. Soc. v. Burford (1872) 70 Pa. St. 321.

[58] Moerschbaecher v. Supreme Council of R. L. (1900) 188 Ill. 9.

[59] Smith v. Reynolds (1892) 66 Law T. (N. S.) 808.

[60] Commonwealth v. Detwiller (1890) 131 Pa. St. 614, 18 Atl. 990.

on Sundays;[61] a by-law of a building and loan association imposing a fine of ten cents per share for each and every month during delinquency;[62] a by-law of a mutual benefit association providing that any member indebted for one year should be in arrears, and not entitled to payment of benefits;[63] a by-law of a benefit association providing for suspension for a certain period after arrears are paid;[64] a by-law of a building society forfeiting membership for default in monthly dues for six consecutive months;[65] a regulation of a lodge requiring applications for sick benefits to be made within five weeks after they accrue;[66] a by-law of a benefit association requiring members entitled to sick benefits to notify the secretary within twenty-four hours after illness, whereupon the latter would send the association's physician to examine him and certify as to his illness, said doctor's certificate alone to be proof thereof;[67] a by-law of an incorporated secret society provid-

[61] In re Granger (1870) 7 Phila. (Pa.) 350.

[62] Roberts v. American B. & L. Ass'n (1896) 62 Ark. 572, 36 S. W. 1085.

[63] Cowan v. New York Caledonian Club (1899) 61 N. Y. Supp. 714.

[64] Rubino v. Fraterna Ass'n (1899) 29 Misc. Rep. 339, 60 N. Y. Supp. 461; Jennings v. Chelsea Division B. F. Soc. (1899) 28 Misc. Rep. 556, 59 N. Y. Supp. 862; Alters v. Journeyman Bricklayers' Protective Ass'n (1898) 43 Wkly. Notes Cas. (Pa.) 336. Contra, Brady v. Coachman's Benev. Ass'n (1891) 14 N. Y. Supp. 272.

[65] Card v. Carr (1856) 1 C. B. (N. S.) 197.

[66] Robinson v. Templar Lodge, No. 17 (1897) 117 Cal. 370, 49 Pac. 170.

[67] Falcone v. Societa Sarti Italiani di Mutuo Soccorso (1899) 61 N. Y. Supp. 873.

ing that a member must be initiated before he can acquire any rights in the society;[68] a by-law of a mutual benefit insurance society investing a committee with power to determine the rights of applicants for benefits,[69] and making the committee's action final;[70] a by-law of a produce exchange providing that, if the complaint committee be unable to conciliate disputants, or induce them to arbitrate, the complaint shall be referred to the board of managers for hearing;[71] a by-law providing that offending members shall be tried before a select committee;[72] a by-law providing that the decision of the society expelling a member shall be final;[73] a by-law made by a company of free fishermen carrying on trade in partnership preventing members from carrying on a separate trade on their own account;[74] a by-law of a mutual benefit insurance company providing that, if any member shall, after admission, engage in any occupation which bars applicants, he shall stand suspended;[75] a by-law of a hospital association pro-

[68] Matkin v. Supreme Lodge, K. of H. (1891) 82 Tex. 301, 18 S. W. 306.

[69] Van Poucke v. Netherland St. V. P. Soc. (1886) 63 Mich. 378, 29 N. W. 863.

[70] Canfield v. Great Camp, K. of M. (1891) 87 Mich. 626, 49 N. W. 875; Russell v. North American Ben. Ass'n (1898) 116 Mich. 699, 75 N. W. 137.

[71] Haebler v. New York Produce Exchange (1896) 149, N. Y. 414, 44 N. E. 87.

[72] Hussey v. Gallagher (1878) 61 Ga. 92.

[73] Anacosta Tribe No. 12 v. Murbach (1858) 13 Md. 93.

[74] Rex v. Free F. & D. of Faversham (1799) 8 Term R. 352.

[75] Schmidt v. Supreme Tent, K. of M. (1897) 97 Wis. 532, 73 N. W. 22.

viding that only physicians who comply with an established code of medical ethics shall practice in the hospital;[76] a by-law declaring that no lawyer who is attorney in a suit against the company shall be eligible as a director;[77] a by-law providing that any officer elected by the board of directors may be removed by a certain vote of a majority of the board;[78] and a by-law of a board of trade forbidding members, under penalty of expulsion, from dealing with or representing those who are gambling in grain.[79]

Same—Illustrations of unreasonable by-laws.

§ 43. The following by-laws have been condemned by the courts as unreasonable: A by-law providing for the expulsion of members without notice to them;[80] a by-law of a mutual benefit society forfeiting the funeral benefits in case a member's dues, though fully paid, are not paid at the precise time when due;[81] a by-law of a mutual benefit society providing that any member in arrears with his dues shall be deprived of benefits for three months after he has paid up all his arrears;[82] a by-law requiring the officers

[76] People v. Burnham Hospital (1896) 71 Ill. App. 246.

[77] Cross v. West Virginia, C. & P. Ry. Co. (1892) 37 W. Va. 342, 16 S. E. 587.

[78] Ellis v. North Carolina Inst. for Deaf & Dumb & Blind (1873) 68 N. C. 423, 5 Am. Corp. Cas. 591.

[79] Board of Trade v. Riordan (1900) 94 Ill. App. 298.

[80] Fritz v. Muck (1881) 62 How. Pr. (N. Y.) 69.

[81] Nelligan v. New York Typographical Union (1886) 2 City Ct. Rep. (N. Y.) 261.

[82] Cartan v. Father Matthew U. B. Soc. (1869) 3 Daly (N. Y.) 20; Brady v. Coachman's Benev. Ass'n (1891) 14 N. Y. Supp. 272; Buecking v. Blum Lodge (1877) 1 City Ct. Rep. (N. Y.) 51. But these cases

to treat the members to a dinner;[83] a by-law of a board of trade requiring the members to submit their business controversies to arbitration;[84] a by-law of a building and loan association imposing a fine of ten per cent per month for failure to pay dues;[85] a by-law making the monthly dues sixteen times as large as before, when no reason for the increase existed;[86] a by-law forfeiting the stock of a particular member for nonpayment of assessments without affecting other delinquents;[87] a by-law making the right to transfer stock subject to the approval of the directors;[88] a by-law restricting the transfer of shares without first giving other stockholders and the corporation an option to purchase at a price named;[89] a by-law providing that shares given in exchange for stockholders' notes and mortgages should not be transferred unless the amount of such notes was paid;[90] a by-law providing that no proxy shall be

have been substantially overruled by the later decisions. Jennings v. Chelsea Division B. F. Soc. (1899) 28 Misc. Rep. 556, 59 N. Y. Supp. 862; Rubino v. Fraterna Ass'n (1899) 29 Misc. Rep. 339, 60 N. Y. Supp. 461. See, too, Alters v. Journeyman Bricklayers' Protective Ass'n (1898) 43 Wkly. Notes Cas. (Pa.) 336.

[83] Framework Knitters v. Green (1702) 1 Ld. Raym. 113; Scriveners' Company v. Brooking (1842) 2 Gale & D. 419, 3 Q. B. 95.

[84] State v. Merchants' Exchange (1876) 2 Mo. App. 96.

[85] Lynn v. Freemansburg B. & L. Ass'n (1887) 117 Pa. St. 1, 11 Atl. 537.

[86] Hibernia Fire Engine Co. v. Harrison (1880) 93 Pa. St. 268.

[87] Budd v. Multnomah St. Ry. Co. (1887) 15 Or. 418.

[88] Farmers' & Merchants' Bank v. Wasson (1878) 48 Iowa, 339.

[89] Victor G. Bloede Co. v. Bloede (1896) 84 Md. 129.

[90] Andes Ins. Co. v. Waters (1876) 1 Wkly. Law Bul. (Ohio) 172.

voted by one not a stockholder;[91] a by-law of an association of instrumental musicians that no member shall play in any engagement with any person not belonging to the association;[92] and a by-law of a merchants' exchange requiring members to submit their business controversies to arbitration, on pain of expulsion.[93]

Appropriateness.

§ 44. By-laws must be germane to the object for which the corporation is formed. This rule is merely an application of the doctrine that by-laws must be reasonable, since it is not reasonable for a corporation to attempt to regulate matters with which it has no concern. If a by-law is clearly alien to the nature of a corporation, and a departure from its purpose, such a by-law is *ultra vires* and void.[94]

Same—Illustrations.

§ 45. Hence a by-law of a mechanics' benefit society, that each contributing member should be assessed ten cents additional every three months, and the proceeds be forwarded to another association to aid them in their endeavor to secure legislation restricting immigration, is alien to the purpose of the society.[95] A corporation or-

[91] People's Home Savings Bank v. Superior Court (1894) 104 Cal. 649, 38 Pac. 452.

[92] Parker v. Toronto Musical Protective Ass'n (1900) 32 Ont. 305.

[93] State v. Union Merchants' Exchange (1876) 2 Mo. App. 96.

[94] People v. Chicago Board of Trade (1867) 45 Ill. 118.

[95] Crumpton v. Pittsburg Council, No. 117 (1896) 1 Pa. Super. Ct. 613, 38 Wkly. Notes Cas. 335.

ganized for the promotion of literary and scientific pursuits has no power to pass by-laws confining the membership to persons of a particular religious faith, and subjecting the affairs of the corporation to ecclesiastical control.[96] And a by-law of a company of proprietors of a public canal, closing navigation on Sunday, under penalty, is void.[97] But an association of tobacco buyers and warehousemen, empowered by its articles to regulate its members in buying, selling, and warehousing tobacco, may require members to give bond to secure to shippers the proceeds of their tobacco.[98] It has been held that where a society is incorporated for the object of raising funds for the relief of its members in case of sickness or misfortune, a by-law declaring the villifying of any of its members a crime against the society punishable by expulsion is void, since such a by-law is clearly unnecessary for the good government of the corporation.[99] And it seems probable, from another case, that a similar by-law, making slander against the society an offense, would also be invalid.[100] On the other hand, it has been held that a provision in the constitution of a benefit society, providing that, if a member of the order make "to the chief ranger, or

[96] People v. Young Men's Father Matthew T. A. B. Soc., No. 1 (1879) 41 Mich. 67, 1 N. W. 931, 6 Am. Corp. Cas. 626.

[97] Calder & Hebble Navigation Co. v. Pilling (1845) 14 Mees. & W. 76, 9 Jur. 377. But a by-law of a library association closing its library on Sundays is valid. In re Granger (1870) 7 Phila. (Pa.) 350.

[98] Warren v. Louisville Leaf Tobacco Exchange (Ky.; 1900) 55 S. W. 912.

[99] Commonwealth v. St. Patrick Benev. Soc. (1810) 2 Bin. (Pa.) 441.

[100] People v. Mechanics' Aid Soc. (1870) 22 Mich. 86.

to the public, an accusation against a sister that shall be false or malicious, she shall be suspended or expelled," is not void as having nothing to do with the transaction of the business of a fraternal insurance society.[101] An association formed to afford relief, comfort, and protection to members may provide by by-law for payment of the funeral expenses of members.[102]

REGULATION OF PARTICULAR SUBJECTS.

Duties of officers.

§ 46. One of the principal subjects of corporate legislation by means of by-laws is the definition and the regulation of the duties of the officers of the corporation. These duties are almost always regulated by by-laws, but the by-laws on this subject do not seem to have been much discussed by the courts, probably for the reason that their provisions have not often given rise to litigation. A by-law which gives control of the corporate affairs to persons outside the corporation is void.[103] Nor can the directors

[101] People v. Women's Catholic Order of Foresters (1896) 162 Ill. 78, 44 N. E. 401, affirming Women's Catholic Order of Foresters v. People (1895) 59 Ill. App. 390. The court attempts to distinguish this case from Commonwealth v. St. Patrick Benev. Soc. (1810) 2 Bin. (Pa.) 441, by drawing a distinction between villifying a member and making accusation against him, and also by drawing a distinction between provisions of the constitution and of the by-laws, although the constitution in question was not the corporate charter.

[102] Lysaght v. St. Louis O. S. Ass'n (1893) 55 Mo. App. 538.

[103] People v. Young Men's Father Matthew T. A. B. Soc. No. 1. (1879) 41 Mich. 67, 1 N. W. 931; Allnutt v. Subsidiary High Court, O. of F. (1886) 62 Mich. 110, 28 N. W. 802.

by by-law confer upon a committee to be appointed by the president all the powers conferred upon them by the charter.[104] But a banking association may, by its by-laws, divide its business into several distinct departments, and intrust to a separate committee of the directors exclusive charge of each department.[105]

Same.

§ 47. It has been held that a by-law of a railroad company which provided how the officers of the company should execute promissory notes of the corporation was valid.[106] A by-law of an English corporation which compelled the officers, upon election, to give a dinner to all the members of the company, was held invalid, it not being shown that the giving of such dinner was in any way beneficial to the society.[107] A by-law of a banking corporation, authorizing the president to certify checks on the bank, does not authorize him to certify checks drawn by himself;[108] and a by-law giving the president of the corporation general charge of its business does not invest him with power to do any act which the by-laws expressly intrust to a committee of the directors.[109]

[104] Tempel v. Dodge (1895) 89 Tex. 69.

[105] Palmer v. Yates (1849) 3 Sandf. (N. Y.) 137.

[106] Came v. Brigham (1854) 39 Me. 38.

[107] Scriveners' Company v. Brooking (1842) 2 Gale & D. 419, 3 Q. B. 95; Framework Knitters Co. v. Green (1697) 1 Ld. Raym. 113; Carter v. Sanderson (1828) 5 Bing. 79.

[108] Claflin v. Farmers' & Citizens' Bank (1862) 25 N. Y. 293.

[109] Twelfth St. Market Co. v. Jackson (1883) 102 Pa. St. 269.

Same.

§ 48. Neither the president[110] nor general manager[111] of a corporation has authority to sign negotiable paper for third persons. Officers empowered to purchase property may contract for payment,[112] and give the company's note therefor.[113] A by-law declaring how many directors must be present at a directors' meeting in order to constitute a quorum is valid, even though the number named be less than a majority of the board.[114] Corporations may enact by-laws compelling their officers to give bonds for the faithful performance of their duties.[115] The power of filling vacancies being incident to the corporation, it may by by-law prescribe the manner in which such vacancies shall be filled.[116] A corporation may declare by by-law that no lawyer who is attorney in a suit against the company shall be eligible as a director.[117] Neither a director[118] nor an officer[119] is entitled to any salary un-

110 Steiner v. Steiner L. & L. Co. (1898) 120 Ala. 128, 26 So. 494.

111 Dobson v. More (1896) 164 Ill. 110, 45 N. E. 243.

112 Arapahoe C. & L. Co. v. Stevens (1889) 13 Colo. 534, 22 Pac. 823.

113 Siebe v. Joshua Hendy Machine-Works (1890) 86 Cal. 390, 25 Pac. 14.

114 Hoyt v. Sheldon (1858) 3 Bosw. (N. Y.) 287; Hoyt v. Thompson (1859) 19 N. Y. 215. These two cases refer to the same by-law. The question is an interesting one, and it is to be regretted that the point has not been also passed upon by the courts of other states.

115 Savings Bank of Hannibal v. Hunt (1880) 72 Mo. 597.

116 Kearney v. Andrews (1854) 10 N. J. Eq. 70.

117 Cross v. West Virginia, C. & P. Ry. Co. (1892) 37 W. Va. 342, 16 S. E. 587.

118 Jones v. Vance Shoe Co. (1899) 92 Ill. App. 158.

119 St. Louis, A. & S. R. Co. v. Crews (1897) 75 Ill. App. 496.

less the same is provided for by by-law; but payment to a corporate officer of a salary in excess of that prescribed by by-law is not void as an *ultra vires* act, but merely voidable at the suit of an innocent stockholder injured thereby.[120] A further discussion of this class of by-laws, and their effect, will be found in a later chapter.[121]

Meetings and elections.

§ 49. The regulation of the meetings of the corporation and the election of its directors and officers is another important subject of by-law legislation. Whenever these matters are not regulated by the charter or by prescription, the right to regulate them by by-laws is unquestionable.[122] By-laws may also regulate the mode of calling as well as of holding meetings of stockholders.[123] In a case in Maine it appeared that one by-law of a certain corporation provided that the officers of the corporation should hold office for one year, and until their successors were elected and qualified. Another by-law provided that the notice of meetings should specify the business to be transacted at such meetings. It was held that the election of officers might be held at the annual meeting without being specified in the notice, since the by-law which prescribed the business to be done at the annual meeting to be the election of the officers operated as sufficient notice.[124]

120 Brown v. De Young (1897) 167 Ill. 549, 47 N. E. 863.
121 See post, §§ 106, 107.
122 Newling v. Francis (1789) 3 Term R. 189.
123 Taylor v. Griswold (1834) 14 N. J. Law, 222.
124 Sampson v. Bowdoinham Steam Mill Corp. (1853) 36 Me. 82.

Same—Notice.

§ 50. Where the by-laws fix the time and place of holding corporate meetings, but do not provide for giving notice of such meetings, no notice of the meeting is necessary.[125] Where a by-law requiring written notice of special meetings of the directors is silent as to the manner of serving the notice, it is immaterial how the notice is served, provided it is shown that notice of the meeting was actually received;[126] though the rule in regard to notices that may affect a member's pecuniary rights is that, in the absence of any provision in the by-laws as to the manner of serving such notice, the service must be personal, as at common law.[127] And when all the directors are present at a special meeting, the fact that notice of such meeting was not given as required by the by-laws is immaterial.[128] So, also, a member of a society who attends and participates in a meeting without objection cannot afterwards complain that notice of the meeting was not given as required by the by-laws.[129]

Same—Unauthorized meetings.

§ 51. Where the by-laws of a corporation provide that

[125] Morrill v. Little Falls Mfg. Co. (1893) 53 Minn. 371, 55 N. W. 547.

[126] Ashley Wire Co. v. Illinois Steel Co. (1896) 164 Ill. 149, 45 N. E. 410.

[127] People v. Hoboken Turtle Club (1891) 14 N. Y. Supp. 76; Fields v. United Brotherhood of C. & J. (1895) 60 Ill. App. 258.

[128] Minneapolis Times Co. v. Nimocks (1893) 53 Minn. 381, 55 N. W. 546. In some states there is an express provision of statute to that effect.

[129] Helbig v. Rosenberg (1892) 86 Iowa, 159, 53 N. W. 111.

all meetings of the directors shall be specially called, a meeting of a part, although a majority, of the board of directors not called in pursuance of the by-laws, is not a lawful meeting.[130] Where the by-laws of a social club provide for special meetings of the trustees on notice in writing to each member of the board, and authorize the expulsion of a member at such a meeting by a two-thirds vote of those present, the board has no authority to expel a member at a special meeting, of which one of the members, who was not present, did not have written notice.[131] Under charter provisions requiring that alteration of the by-laws shall be made only at a general meeting of the members convened by public notice, as in the case of election of directors, and that the president, when required by twenty members, shall call the general meeting by giving notice, as in the case of directors, for the transaction of such business as may be specified in such notice, the by-laws may not be changed at an annual meeting, where notice is given only of the election of directors.[132] Where the statute and the by-laws provided that notices of special meetings should be given on the order of the president, or, if there were none, on the order of two directors, it was held that, while there was a president competent to act, a special meeting called by two directors, on the refusal of the president to make the call, was illegal.[133] In a New

[130] Mast Buggy Co. v. Litchfield F. H. & I. Co. (1893) 55 Ill. App. 98.

[131] People v. Greenwood Lake Ass'n (1892) 18 N. Y. Supp. 491.

[132] Mutual Fire Ins. Co. v. Farquhar (1898) 86 Md. 668, 39 Atl. 527.

[133] Smith v. Dorn (1892) 96 Cal. 73, 30 Pac. 1024.

Jersey case, it appeared that a special meeting of the stockholders of a company organized under the general act was called on less than the required ten days' notice to amend the by-laws by increasing the number of directors, and to elect those who should be added. At the meeting every share of the stock of the company was represented and voted, and the by-laws were so amended. The additional directors were then chosen by the votes of a majority in number and interest of all the stockholders, the minority refusing to vote. No stock had been transferred within twenty days preceding the meeting. It was held that, notwithstanding its informality, the election would not be disturbed.[134] The fact that an annual meeting required by by-law to be held in a certain month was omitted through neglect does not preclude holding the meeting at a later time.[135] Where the by-laws authorize the president to call special meetings of the directors upon giving notice of the time and place thereof, and such place is not prescribed by by-law, the president may call a special meeting at a place other than the principal place of business of the corporation.[136] In a New York case it appeared that the statute required directors to be chosen at a place fixed by the by-laws. The principal office of the corporation was established in Waterford, but the defendant was chosen director at a meeting held in Troy. It did not appear from the evidence that any particular place

[134] In re A. A. Griffing Iron Co. (1898) 63 N. J. Law, 168, 41 Atl. 931.

[135] Scanlan v. Snow (1894) 2 App. D. C. 137.

[136] Corbett v. Woodward (1879) 5 Sawy. 403, Fed. Cas. No. 3,223.

was fixed for the meeting by the by-laws, but it was shown that the company had an office in Troy, and that stockholders' meetings had been held there for twelve years. It was held that the defendant's election was not invalid.[137]

Same—Votes and proxies.

§ 52. As a general rule, a by-law authorizing the members or stockholders to vote by proxy at an election of directors is valid,[138] although it has been held in New Jersey that such a by-law is not good in the case of bridge companies, on the theory that a bridge company is a *quasi* public corporation.[139] A by-law restricting proxies to stockholders has been declared invalid.[140] Where the by-laws provide that a majority vote of the directors shall determine the action of that body, it has been held that a majority of the whole number of directors must be present; but if a majority of those present concur in a resolution, it is binding.[141] A regulation of an incorporated association providing that stockholders shall have one vote for each share held up to ten shares, and fixing the proportion

[137] Union Nat. Bank v. Scott (1900) 53 App. Div. 65, 66 N. Y. Supp. 145.

[138] State v. Tudor (1812) 5 Day (Conn.) 329; People v. Crossley (1873) 69 Ill. 196. In Philips v. Wickham (1829) 1 Paige (N. Y.) 590, 598, this seems to have been considered a doubtful question.

[139] Taylor v. Griswold (1834) 14 N. J. Law, 227. Contra, State v. Tudor (1812) 5 Day (Conn.) 329.

[140] In re Lighthall Mfg. Co. (1888) 47 Hun (N. Y.) 258; People's Home Savings Bank v. Superior Court (1894) 104 Cal. 649, 38 Pac. 452.

[141] Foster v. Mullanphy Planing-Mill Co. (1887) 92 Mo. 79, 4 S. W. 260.

which their votes shall bear to their shares when above that number, is valid.[142] Where the power of electing directors is lodged by statute in the hands of the stockholders, a corporation cannot by its by-laws either give or take it away.[143] Where the charter declares that the act of a majority of the trustees duly assembled as a board shall be valid as a corporate act, a by-law which authorizes the election of a trustee to fill a vacancy by a less number than a majority is void as contrary to the charter.[144]

Same—Quorum.

§ 53. A by-law which provides that, where one-third or more of the directors are present at the regular meeting, they shall have power to adjourn to another day, is reasonable.[145] And a by-law which declares that five directors, including the president, or seven directors without him, shall constitute a quorum for the transaction of the ordinary business of the company, is valid, although the company's charter provides that the corporate powers of the company shall be exercised by a board of directors, to consist of twenty-three persons.[146] A by-law which provides for an annual meeting of a corporation, at which the officers of the company shall be chosen, does not necessarily limit the business that may be transacted at such

[142] Commonwealth v. Detwiller (1890) 131 Pa. St. 614, 18 Atl. 990.

[143] Brewster v. Hartley (1869) 37 Cal. 24, 1 Am. Corp. Cas. 237.

[144] State v. Curtis (1874) 9 Nev. 336.

[145] Smith v. Law (1860) 21 N. Y. 296.

[146] Hoyt v. Sheldon (1858) 3 Bosw. (N. Y.) 287; Hoyt v. Thompson (1859) 19 N. Y. 215.

meeting to the election of officers.[147] Where the act under which the corporation is organized declares what shall be the qualifications of members who are allowed to vote for officers, a corporation cannot by by-law impose additional qualifications;[148] and a by-law providing and authorizing any stockholder to challenge votes, and allow the inspectors to require the person whose vote is challenged to make answer under oath to the matters set up in the challenge, or else lose his vote, is void.[149] It is proper, however, to provide by by-law that the president of a corporation shall appoint inspectors of election, and that ballots on which is written anything except the names of candidates shall not be counted.[150] Under a by-law which requires a majority of the stock to be represented at a meeting before any business is transacted, a stockholders' meeting at which less than a majority is represented cannot elect officers.[151]

Assessments and dues.

§ 54. The regulation of assessments on stock and of dues payable by the members is another matter that is

147 Warner v. Mower (1839) 11 Vt. 392.

148 People v. Phillips (1845) 1 Denio (N. Y.) 398.

149 People v. Kip (1822) 4 Cow. (N. Y.) 382.

150 Commonwealth v. Woelper (1817) 3 Serg. & R. (Pa.) 31.

151 Ellsworth Woolen Mfg. Co. v. Faunce (1887) 79 Me. 440. In this case there was present at the meeting a majority of all the stock that had been issued, but not a majority of all the authorized stock. But this case is qualified so as to be, in effect, overruled by the later case of Castner v. Twitchell-Champlin Co. (1898) 91 Me. 524, 40 Atl. 558.

often regulated by by-laws. But where the stockholders are not personally liable for assessments without an express provision therefor, a by-law which provides that, if the stock of a delinquent stockholder shall not sell for enough to pay the assessment thereon, the stockholder shall be personally liable to the corporation for the deficiency, is invalid.[152] The dues imposed upon members should be reasonable. In a case in Pennsylvania it appeared that a volunteer fire company had been incorporated for the promotion of the public good by the extinguishment of fires. By reason of the creation of a paid fire department, the company ceased to run to fires, and it then sold its engine and leased its house. After this a by-law was passed increasing the monthly dues payable by the members from twelve and a half cents per month to two dollars per month, and the court held that such by-law was invalid.[153]

Same—Reasonableness.

§ 55. It was held in an English case that a by-law of an incorporated company of tobacco pipe makers, providing that every freeman using or not using the trade of pipe making should pay a yearly contribution to the company, was bad, inasmuch as it did not appear that any rightful expenditure of the company required such a tribute.[154]

[152] Kennebec & P. R. Co. v. Kendall (1850) 31 Me. 476; Jay Bridge Corp. v. Woodman (1850) 31 Me. 573.

[153] Hibernia Fire Engine Co. v. Harrison (1880) 93 Pa. St. 268.

[154] Company of Tobacco Pipe Makers v. Woodroffe (1828) 7 Barn. & C. 838.

A by-law of an insurance association authorizing suspension from benefits for failure to pay assessments may lawfully provide that payments after such suspension shall not constitute a waiver of the by-law.[155] When the by-laws of a benefit society provide that members shall be notified of assessments, but do not state how they are to be notified, notice must be personal, since the effect of neglecting such notice may result in pecuniary loss.[156] When the charter provides for assessments, but does not say who shall make them, the directors may by by-law authorize their executive committee to make them.[157]

Transfer of stock.

§ 56. The mode of transferring stock is also frequently regulated by the by-laws. It has been held that a transfer of stock not entered on the books of the corporation, in accordance with its by-laws, is invalid as against the corporation,[158] and does not constitute the transferee a member of the corporation;[159] and where the by-laws prescribe

[155] Schmidt v. Supreme Tent, K. of M. (1897) 97 Wis. 532, 73 N. W. 22.

[156] Fields v. United Brotherhood of C. & J. (1895) 60 Ill. App. 258; Wachtel v. Noah W. & O. Benev. Soc. (1881) 84 N. Y. 28, 38 Am. Rep. 478.

[157] Fee v. National Masonic Acc. Ass'n (1900) 110 Iowa, 271, 81 N. W. 483.

[158] Stockwell v. St. Louis Mercantile Co. (1880) 9 Mo. App. 133. But this would not be true if the corporation had in any manner waived the requirement. Isham v. Buckingham (1872) 49 N. Y. 216, 221.

[159] Marlborough Mfg. Co. v. Smith (1818) 2 Conn. 583; Vansands v. Middlesex County Bank (1857) 26 Conn. 153.

that transfers of stock shall be under seal, a transfer not under seal confers on the transferee no right to compel the corporation to issue a new certificate to him.[160] A by-law which provides that transfers of stock shall be made by assignment on the treasurer's book, either in person or by attorney on surrender of the certificate and the issue of a new certificate, requires a written assignment on the treasurer's book subscribed by the assignor or his authorized attorney to constitute a transfer of stock.[161] And where a by-law provides that no shares of stock shall be transferred on the books of the corporation until the certificate is surrendered or shown to be lost, the heirs of a deceased stockholder cannot compel the corporation to issue a new certificate to them until they have either surrendered the former certificate, or shown it to be lost.[162]

Same—Irregular transfers.

§ 57. In the absence of by-laws regulating the mode in which stock shall be transferred, transfers must be made in the manner prescribed by the usages of the company, or as set forth in its certificates of stock.[163] And although the by-laws require the entry of transfers of shares to be made on a stock ledger, if in fact no stock ledger is kept, and a transfer is entered, according to the custom of the company, on the subscription list, and an assignment is

[160] Bishop v. Globe Co. (1883) 135 Mass. 132.

[161] Marlborough Mfg. Co. v. Smith (1818) 2 Conn. 583; Lippitt v. American Wood Paper Co. (1885) 15 R. I. 141, 23 Atl. 111.

[162] State v. New Orleans & C. R. Co. (1878) 30 La. Ann. 308.

[163] State v. McIver (1870) 2 S. C. 25.

indorsed on the shares, and a new certificate issued by the company, the latter cannot deny the validity of the transfer.[164] Where stock of a corporation is by charter or by-law transferable only on its books, a purchaser receiving a certificate gets the entire interest of the seller; but if he neglects to have the transfer made on the books of the corporation until after such stock has been transferred to a *bona fide* holder without notice, he loses the right to have the transfer made to him, but the corporation would be liable to the holder of such certificate for permitting the stock to which he was entitled to be transferred to another.[165] Of course by-laws requiring transfers of stock to be made at the office of the company upon surrender of the old certificate do not preclude an equitable assignment by delivery.[166]

Same—Same.

§ 58. As between the parties to the transaction, the sale of stock accompanied by delivery of the certificate passes good title to the vendee in spite of a by-law forbidding a transfer of stock by mere delivery of the stock certificate without a transfer on the books of the company,[167]

[164] Stewart v. Walla Walla P. & P. Co. (1889) 1 Wash. St. 521, 20 Pac. 605.

[165] New York & N. H. R. Co. v. Schuyler (1865) 34 N. Y. 30.

[166] Reed v. Copeland (1883) 50 Conn. 472, 47 Am. Rep. 663.

[167] Moore v. Bank of Commerce (1873) 52 Mo. 379; Wilson v. St. Louis & S. F. Ry. Co. (1891) 108 Mo. 588, 18 S. W. 286; Sargent v. Essex Marine Ry. Co. (1829) 9 Pick. (Mass.) 201; Sargent v. Franklin Ins. Co. (1829) 8 Pick. (Mass.) 90; McNeil v. Tenth Nat. Bank (1871) 46 N. Y. 331; Isham v. Buckingham (1872) 49 N. Y. 222; Cornick v.

or in spite of by-laws which declare that stock can only be transferred upon the surrender of the certificate to the president or secretary, and its cancellation by them.[168] The vendee in such case acquires by his purchase an equitable title to the stock purchased by him,[169] but he holds such title subject to all equitable rights of the corporation against his vendor in regard to such stock,[170] and the vendor remains subject to the liabilities of a stockholder.[171] Where the owner of stock has assigned and transferred the certificate issued to him, and the corporation, without valid reason, refuses to make the transfer, this amounts to a waiver of the requirements as to transfer, and the corporation is bound to recognize the title of the assignee as if the formal transfer had been made.[172] Although the by-laws of a mutual insurance company contemplate the assignment of policies in writing, and the policies provide that assignments shall be made in accordance with the by-laws, an assignment not in writing carries the equitable title to a policy.[173]

Same—Restriction of transfer.

§ 59. The power to regulate the transfer of stock does

Richards (1879) 3 Lea (Tenn.) 6; Chemical Nat. Bank v. Colwell (1892) 132 N. Y. 250, 30 N. E. 644.

[168] Seeligson v. Brown (1884) 61 Tex. 114.

[169] Planters' & Merchants' Mut. Ins. Co. v. Selma Savings Bank (1879) 63 Ala. 585; Reed v. Copeland (1883) 50 Conn. 472, 47 Am. Rep. 663.

[170] Stebbins v. Phoenix Fire Ins. Co. (1833) 3 Paige (N. Y.) 350.

[171] Dane v. Young (1872) 61 Me. 160.

[172] Robinson v. National Bank of New Berne (1884) 95 N. Y. 637.

[173] Cannon v. Farmers' Mut. Fire Ass'n (1899) 58 N. J. Eq. 102, 43 Atl. 281.

not include the power to restrict such transfer, and therefore a by-law prohibiting the alienation of stock is void,[174] and so is a by-law which provides that the validity of a transfer of stock shall depend upon the approval and acceptance of the directors,[175] or upon the consent of all the stockholders,[176] since such by-laws would impose an unwarrantable restriction upon the sale of personal property, and would therefore be in restraint of trade. A by-law prohibiting the transfer of stock except to the corporation is void, although indorsed on the certificates.[177] A statute authorizing corporations to make by-laws consistent with the laws of the state does not authorize a by-law requiring stockholders, before selling their stock, to offer it first to the corporation, since a corporation cannot, in the absence of express authority, restrict the right of a stockholder to dispose of his stock.[178] So a by-law requiring that stockholders shall first offer it to the directors,[179] or to the other stockholders at a price named,[180] is an unreasonable restraint upon the alienation of property. A by-law of a bank providing that all stock sold or

[174] Moore v. Bank of Commerce (1873) 52 Mo. 379.

[175] Farmers' & Merchants' Bank v. Wasson (1878) 48 Iowa, 339.

[176] In re Klaus (1886) 67 Wis. 401.

[177] Herring v. Ruskin Co-operative Ass'n (Tenn. Ch. App.; 1899) 52 S. W. 327.

[178] Ireland v. Globe Milling Co. (1898) 21 R. I. 9, 41 Atl. 258; Ireland v. Globe M. & R. Co. (1895) 19 R. I. 180, 32 Atl. 921.

[179] Brinkerhoff-Farris T. & S. Co. v. Home Lumber Co. (1893) 118 Mo. 447, 24 S. W. 129.

[180] Victor G. Bloede Co. v. Bloede (1896) 84 Md. 129, 33 L. R. A. 107.

transferred shall be conveyed with the express condition that it will be voted in favor of all propositions submitted by the directors to increase the capital stock of the bank is void.[181]

Same—Regulating manner of transfer.

§ 60. A charter which prescribes that the stock shall be transferable only on the books of the company, in such manner as the company shall by by-law direct, is sufficient to authorize the passage of a by-law providing that the board of directors shall prescribe the form of transfer to be registered by the clerk upon the books of the company, and requiring all transfers to be made in the prescribed form, and registered.[182] In a case decided by the supreme court of the United States, it appeared that a by-law of a national bank declared that its shares of stock should be transferable subject to the restrictions of the currency act. Afterwards congress repealed the section of the currency act containing such restrictions, but no amendment of the by-law was made by the bank. The court held that the by-law had no effect to continue such restrictions in force as to that particular bank after the repeal by congress.[183] A by-law which provides that stock in a banking corporation shall be transferable by indorsement in writing in the presence of the cashier, or two other witnesses, is valid, and

[181] McNulta v. Corn Belt Bank (1897) 164 Ill. 427, 45 N. E. 954.

[182] Northrop v. Newton & B. T. Co. (1821) 3 Conn. 544; Northrop v. Curtis (1824) 5 Conn. 251; Oxford Turnpike Co. v. Bunnel (1827) 6 Conn. 552.

[183] Bank v. Lanier (1870) 11 Wall. (U. S.) 376.

under such by-law it is necessary that the witnesses should not only be present, but should attest the indorsement by their signatures.[184] A by-law of an insurance company providing that shares given in exchange for stockholders' notes and mortgages should not be transferred unless such notes were paid before transfer has been held to be an unreasonable discrimination against one class of stockholders.[185]

Creation of lien on stock.

§ 61. By-laws often attempt to create a lien upon the stock in favor of the company for any debts due the company from its stockholders. This usually takes the form of a by-law forbidding the transfer of stock when the person wishing to make the transfer is indebted to the corporation. Probably no question in regard to corporate by-laws has been more discussed by the courts than the question of the legality of such a by-law as this; but its validity has been settled by a multitude of cases. The leading case on this subject is Child v. Hudson's Bay Co., decided in 1723. In that case a by-law provided that, if any member should be indebted to the company, his stock should first be liable for the debt due the company, and that the company might seize and retain the stock for the debt. Lord Macclesfield, in deciding the case, said: "This is a good by-law, for the legal interest of all the stock is in the company, who are trustees for the several members, and may order that the dividends * * * shall be under

184 Dane v. Young (1872) 61 Me. 160.

185 Andes Ins. Co. v. Waters (1876) 1 Wkly. Law Bul. (Ohio) 172.

particular restrictions or terms."[186] This case has been cited and relied on as authority ever since, as sustaining the doctrine that a corporation may by its by-laws forbid a transfer of the stock until the person making the transfer has paid up his indebtedness to the company.[187]

Same—Operation of by-law.

§ 62. Such a by-law applies whether the debt of the stockholder is due or not.[188] A note of the stockholder to the corporation comes within the purview of such a by-law.[189] Such a by-law is not only valid as against the

[186] Child v. Hudson's Bay Co. (1723) 2 P. Wms. 207.

[187] Morgan v. Bank of North America (1822) 8 Serg. & R. (Pa.) 88; Waln's Assignees v. Bank of North America (1822) 8 Serg. & R. (Pa.) 88; Tete v. Farmers' & Mechanics' Bank (1869) 4 Brewst. (Pa.) 308; McDowell v. Bank of Wilmington (1832) 1 Harr. (Del.) 27; Brent v. Bank of Washington (1836) 10 Pet. (U. S.) 614; Cunningham v. Alabama Life Ins. & T. Co. (1843) 4 Ala. 652; St. Louis Perpetual Ins. Co. v. Goodfellow (1845) 9 Mo. 149; Tuttle v. Walton (1846) 1 Ga. 43; Geyer v. Western Ins. Co. (1867) 3 Pittsb. R. (Pa.) 41; Lockwood v. Mechanics' Nat. Bank (1869) 9 R. I. 308; Mechanics' Bank v. Merchants' Bank (1870) 45 Mo. 513; Pendergast v. Bank of Stockton (1871) 2 Sawy. 108, Fed. Cas. No. 10,918; Young v. Vough (1873) 23 N. J. Eq. 325; Spurlock v. Pacific Railroad (1875) 61 Mo. 326; In re Bachman (1875) 2 Cent. Law J. 119, 12 Nat. Bank. Reg. 223; Bank of Holly Springs v. Pinson (1880) 58 Miss. 435; New London & Brazilian Bank v. Brocklebank (1881) L. R. 21 Ch. Div. 302; Stafford v. Produce Exchange Banking Co. (1898) 16 Ohio Cir. Ct. R. 50, 8 Ohio Dec. 483; Reading Fire Ins. & T. Co. v. Reading Iron Works (1890) 137 Pa. St. 282, 21 Atl. 170.

[188] St. Louis Perpetual Ins. Co. v. Goodfellow (1845) 9 Mo. 149; In re Bachman (1875) 2 Cent. Law J. 119, 12 Nat. Bank. Reg. 223; Knight v. Old Nat. Bank (1871) 3 Cliff. 429, Fed. Cas. No. 7,885.

[189] Cunningham v. Alabama Life Ins. & T. Co. (1843) 4 Ala. 652.

stockholder, but also against purchasers of stock at execution sale, where such purchasers have notice of the by-law.[190] It has been held, however, that such a by-law would not affect the rights of an innocent purchaser for value without notice of the by-law.[191] Nor would such a by-law affect a transfer of stock made two days before the by-law was passed, though the transfer is not entered on the books of the company till after the by-law is passed.[192] A by-law providing that no transfer of stock shall be allowed so long as the holder is in arrears to the corporation, or is in any form indebted to it, does not justify the corporation in refusing to allow the transfer on the ground that the stock has not been fully paid up, where all the calls on such stock have been fully paid, since the stockholder's liability for the unpaid portion of his stock does not constitute a debt, within the meaning of such by-law.[193]

Same—Scope of lien.

§ 63. Such a by-law creates a lien as against the stockholder and his assignee for the benefit of creditors, whether the stock stands in his name, or has merely been assign-

[190] Tuttle v. Walton (1846) 1 Ga. 43; Mechanics' Bank v. Merchants' Bank (1870) 45 Mo. 513.

[191] Bank of Holly Springs v. Pinson (1880) 58 Miss. 435; Anglo-Californian Bank v. Grangers' Bank (1883) 63 Cal. 359; Lee v. Citizens' Nat. Bank (1872) 2 Cin. (Ohio) 298.

[192] People v. Crockett (1858) 9 Cal. 112.

[193] Kahn v. Bank of St. Joseph (1879) 70 Mo. 262. But see In re Bachman (1875) 2 Cent. Law J. 119, 12 Nat. Bank. Reg. 223.

ed to him by the former owner.[194] This lien is good not only between the parties, but also as to an attaching creditor of the stockholder.[195] The fact that stock is pledged to the corporation to secure the payment of a particular debt of the stockholder does not release such stock from the general lien created by the by-laws to secure all the debts of such stockholder due the corporation.[196] And a by-law of a bank providing that stockholders desiring to sell shall give the bank an option to purchase for ten days, after which they may sell at pleasure, does not waive the rights of the bank under a statute to a lien on the stock to secure debts due from stockholders.[197]

Same—Validity of by-law.

§ 64. It is held in New York[198] and Louisiana[199] that by-laws of this character are invalid. The reasons given for the New York decisions are that the by-law is not reasonable, and that it creates a secret lien. The first reason is opposed to the weight of authority; the second reason would not apply to persons who had actual or constructive notice of the by-law. The reason given for the Louisi-

[194] Wetherell v. Thirty-First St. B. & L. Ass'n (1894) 153 Ill. 361, 39 N. E. 143.

[195] Farmers' & Traders' Bank v. Haney (1893) 87 Iowa, 101, 54 N. W. 61.

[196] In re Peebles (1875) 2 Hughes, 394, Fed. Cas. No. 10,902.

[197] Citizens' State Bank v. Kalamazoo County Bank (1896) 111 Mich. 313, 69 N. W. 663.

[198] Driscoll v. West Bradley & C. M. Co. (1874) 59 N. Y. 101; Bank of Attica v. Manufacturers' & Traders' Bank (1859) 20 N. Y. 501.

[199] Bryon v. Carter (1870) 22 La. Ann. 98; New Orleans Nat. Banking Ass'n v. Wiltz (1881) 4 Woods (U. S.) 43, 10 Fed. 330.

ana decisions is that such a by-law would operate to withdraw property from commerce. It would certainly have the effect of impeding somewhat the sale of corporate stock, but why such impediment would not be legal as against those who, by becoming stockholders, submit to the regulations of the company, it is difficult to understand. The better reason, as well as the weight of authority, seems to be in favor of the validity of such a by-law. And where such a by-law is printed in full on the back of the stock certificates, or is so referred to in each certificate that no purchaser can read it without being made aware of the by-law, it would seem that all persons would have adequate notice of the by-law, and of the rights existing under it.

Same—Banking corporations.

§ 65. By-laws of this character are usually made by banking corporations, since they are most likely to be the creditors of their stockholders; and in one Pennsylvania case it was intimated that such a by-law would not be good when made by any corporation other than a bank.[200] It is difficult to see any reason for this distinction, and the leading case of Child v. Hudson's Bay Co., supra, involved a corporation that was not a bank. There is one class of banks, however, that cannot pass such a by-law, and that is banking associations organized under the national banking act. The reason for this restriction is that national banks are forbidden by act of congress to make loans on the security of their own stock, and therefore a by-law of

[200] Steamship Dock Co. v. Heron (1866) 52 Pa. St. 280.

this nature, which would be an attempt to do indirectly what the bank is forbidden to do directly, has been repeatedly held in the case of national banks to be void.[201] Some of the earlier decisions held that even national banks might adopt such a by-law,[202] but the law is now settled to the contrary.

Retiring or forfeiting stock.

§ 66. Apart from the right of regulating the transfer of stock, and the power to create a lien on it for debts due to the corporation, the power to pass by-laws affecting the stock is very limited. Thus, under a general power to pass by-laws, for "the general regulation of the business of the corporation," and such as are "needful in carrying out and effecting" its objects, the stockholders have no authority by by-law to make an enforced retirement of part of the capital stock against the objection of even a single stockholder.[203] And a by-law giving the stockholders the privilege of forfeiting their stock, upon payment of thirty per cent of its face value, is void as against creditors, where such payment would not create a fund sufficient to pay

[201] Bullard v. Bank (1873) 18 Wall. (U. S.) 589; Bank v. Lanier (1870) 11 Wall. (U. S.) 369; Delaware, L. & W. R. Co. v. Oxford Iron Co. (1884) 38 N. J. Eq. 340; Rosenback v. Salt Springs Nat. Bank (1868) 53 Barb. (N. Y.) 495; Conklin v. Second Nat. Bank (1871) 45 N. Y. 655, 53 Barb. 512; Evansville Nat. Bank v. Metropolitan Nat. Bank (1871) 2 Biss. 527, Fed. Cas. No. 4,573; Second Nat. Bank v. National State Bank (1874) 10 Bush (Ky.) 367.

[202] Lockwood v. Mechanics' Nat. Bank (1869) 9 R. I. 308; Young v. Vough (1873) 23 N. J. Eq. 325; In re Dunkerson (1868) 4 Biss. 227, Fed. Cas. No. 4,156.

[203] Bergman v. St. Paul Mut. Bldg. Ass'n (1882) 29 Minn. 278.

the debts of the corporation,[204] though, as between the corporation and the stockholders, such a by-law would probably be valid.[205]

Issuing preferred stock.

§ 67. After common stock has been issued by a corporation, it has no right, except by unanimous consent of the stockholders, to provide by by-law for the issuance of preferred stock.[206] It has been held in Massachusetts, in regard to a church corporation, that a by-law making the price of each share twenty-five dollars, and providing that, on payment of three dollars additional, any shareholder might have his share made redeemable out of the corporate funds whenever he should remove from the town, was valid.[207] Where the charter of a mutual benefit society specifies the amount that may be paid each member as a mortuary benefit, the society cannot by by-law provide for a larger benefit.[208]

Affecting rights of members.

§ 68. The power of a corporation to pass by-laws affecting the rights of its members has frequently been the subject of litigation, and the general tendency of the decisions is to abridge rather than to extend this power.

[204] Slee v. Bloom (1822) 19 Johns. (N. Y.) 477.

[205] Cooper v. Frederick (1846) 9 Ala. 739.

[206] Kent v. Quicksilver Mining Co. (1879) 78 N. Y. 179.

[207] Davis v. Proprietors of Meeting House (1844) 8 Metc. (Mass.) 321.

[208] Nelligan v. New York Typographical Union No. 6 (1886) 2 City Ct. Rep. (N. Y.) 261.

Thus, where the articles of incorporation prescribe the conditions of membership, by-laws cannot impose additional conditions,[209] though, where there is nothing in the charter to prevent it, an incorporated secret society may provide by by-law that an applicant for membership, in addition to paying his fee and being elected a member, must be initiated into the society before he acquires any rights as a member.[210] Where a society is incorporated merely for literary or benevolent purposes, and is possessed of property, a by-law requiring all members to receive the sacraments of the Roman Catholic Church twice a year,[211] or to be members of that church,[212] under penalty of expulsion, is void, as contrary to the constitutional right of religious freedom. But where a society is incorporated as a religious organization, it may provide by by-law that any member who shall either cease to worship regularly with the society, or shall fail to contribute regularly to the support of its public worship for one year, shall lose his membership.[213] A by-law of a mutual benefit insurance company providing that, if any member shall, after admission, engage in any occupation which bars applicants for admission, he shall stand suspended, is valid.[214]

[209] People v. Young Men's Father Matthew T. A. B. Soc. No. 1 (1879) 41 Mich. 67, 1 N. W. 931, 6 Am. Corp. Cas. 626.

[210] Matkin v. Supreme Lodge, K. of H. (1891) 82 Tex. 301, 18 S. W. 306.

[211] People v. St. Franciscus Ben. Soc. (1862) 24 How. Pr. (N. Y.) 216.

[212] People v. Young Men's Father Matthew T. A. B. Soc. No. 1 (1879) 41 Mich. 67, 1 N. W. 931, 6 Am. Corp. Cas. 626.

[213] Gray v. Christian Soc. (1884) 137 Mass. 329, 50 Am. Rep. 310; Commonwealth v. Cain (1820) 5 Serg. & R. (Pa.) 509.

[214] Schmidt v. Supreme Tent, K. of M. (1897) 97 Wis. 532, 73 N. W. 22.

Same—Suspension of members.

§ 69. Where neither the charter of a corporation nor any general statute imposes on the individual members a liability for the corporate debts, such liability cannot be imposed by by-law, since such a by-law might be the act of a mere majority, and its adoption, even by unanimous vote, would not be the act of the individual members, and would not, therefore, bind them as a contract.[215] Where the charter of a mutual insurance company provides that the neglect of a member to pay his assessment for thirty days after actual notice shall enable the corporation to declare his entire deposit note due, a by-law which provides that the notice shall be given by publication and mailing is invalid, as contrary to the charter.[216] And where the charter of such a society recognizes the right of any member to designate his beneficiary by his will, the society cannot by by-law abridge this right.[217] Nor can the society provide by by-law that only a part instead of all the policy holders shall be assessed to pay a particular loss, contrary to the contract contained in its policies of insurance.[218]

Same—Limiting right to benefit and restricting suits.

§ 70. A mutual insurance company may provide by

[215] Trustees v. Flint (1847) 13 Metc. (Mass.) 539; Reid v. Eatonton Mfg. Co. (1869) 40 Ga. 101.

[216] Great Falls Mut. Fire Ins. Co. v. Harvey (1864) 45 N. H. 299.

[217] Raub v. Masonic Mut. Relief Ass'n (1884) 3 Mackey (D. C.) 68.

[218] Stewart v. Lee Mut. Fire Ins. Ass'n (1886) 64 Miss. 499, 1 So. 743.

by-law that actions against the company for losses shall be brought within a limited time after the directors determine the extent of the loss.[219] But it cannot by by-law restrict its members to a particular county in which to bring such an action.[220] The by-law of a mutual benefit society which provides that no benefits shall be paid when a member's death is caused by intemperance or debauchery is reasonable.[221] So, also, is a by-law forfeiting benefits for suicide.[222] And so is a by-law making the production of a doctor's certificate a condition precedent to the receipt of sick benefits.[223] A by-law of a charitable asylum forbidding the inmates to leave the premises without permission, or to indulge in contention or boisterous or disorderly conversation at table upon pain of expulsion, is reasonable and valid.[224]

Same—Expulsion of subordinate lodge.

§ 71. Where the charter of an incorporated society, composed of various subordinate branches or assemblies, provides that membership shall cease by death, voluntary withdrawal, or expulsion, a by-law which declares that

219 Amesbury v. Bowditch Mut. Fire Ins. Co. (1856) 6 Gray (Mass.) 603.

220 Nute v. Hamilton Mut. Ins. Co. (1856) 6 Gray (Mass.) 174; Amesbury v. Bowditch Mut. Fire Ins. Co. (1856) 6 Gray (Mass.) 603.

221 St. Mary's Ben. Soc. v. Burford (1872) 70 Pa. St. 321. See post, c. 5.

222 Theobald v. Supreme Lodge, K. of P. (1894) 59 Mo. App. 87; Supreme Lodge, K. of P., v. Clarke (1899) 88 Ill. App. 600. See post, c. 5.

223 Harrington v. Workingmens' Ben. Ass'n (1883) 70 Ga. 340.

224 People v. Sailors' Snug Harbor (1868) 54 Barb. (N. Y.) 532.

the removal of a local assembly from the jurisdiction of a district assembly shall be equivalent to voluntary withdrawal, is void as repugnant to the charter.[225] In a case in Pennsylvania it appeared that a savings bank had been chartered as a charitable institution. It had both members and stockholders. The stockholders elected the directors, but the members had the right to investigate the management of the bank periodically. The directors had power to provide for the admission of members, and they passed a by-law declaring that every stockholder should be a member. The court held that the by-law was invalid, being contrary to the spirit of the charter, which gave to the members alone the direction and management of the corporation.[226] Another case in the same state involved the powers of an incorporated fire company, whose charter provided that the corporation should consist of not more than one hundred active members. The court held that a by-law authorizing the election of "contributing members" who were not active members was illegal, since the power of electing members conferred by the charter could not be extended by the by-laws.[227] It is probable that by-laws may limit or even take away altogether the members' common-law right to inspect the corporate records.[228]

[225] New York Protective Ass'n v. McGrath (1889) 5 N. Y. Supp. 8.

[226] Commonwealth v. Gill (1837) 3 Whart. (Pa.) 246.

[227] Diligent Fire Co. v. Commonwealth (1874) 75 Pa. St. 291.

[228] Ranger v. Champion C. P. Co. (1892) 51 Fed. 61, 5 Nat. Corp. Rep. 30.

Private affairs of members.

§ 72. The power of a corporation to control the conduct and define the rights of its members by means of its by-laws is limited strictly to their rights and conduct as members of the association. With the private affairs of its members the corporation has nothing to do, and any by-law attempting to interfere with such affairs is necessarily *ultra vires* and void. Thus, a medical society incorporated for the purpose of regulating the practice of physic and surgery has no right to pass a by-law establishing a tariff of prices to be charged by its members for medical services rendered by them to their patients.[229] And a musical society incorporated for the purpose of cultivating the art of music and promoting good feeling among the members of the profession has no right to pass a by-law forbidding its members to play in any orchestra or band containing persons who are not members of the society.[230] An unincorporated trade association, designed to advance the general welfare of its members, may provide that a member sustaining injury by accident in his

[229] People v. Medical Soc. (1857) 24 Barb. (N. Y.) 570. But a contrary holding has been made in case of a pilots' society. Lee v. Louisville, P. B. & R. Ass'n (1867) 65 Ky. 254.

[230] Thomas v. Musical Mut. Protective Union (1888) 17 N. Y. St. Rep. 51, 49 Hun (N. Y.) 171, 2 N. Y. Supp. 195. This case was reversed by the court of appeals upon another point, that court expressly refusing to pass on the validity of the by-law in question. Thomas v. Musical Mut. Protective Union (1890) 121 N. Y. 45, 24 N. E. 24.

work shall not receive benefits unless he was working on the job at wages prescribed by the organization.[231]

Same—Individual trade by members.

§ 73. In a recent case in Minnesota it was decided that a corporation organized to buy and sell fuel, and to do any and all things that might legally be done to promote the interests of the corporation and its stockholders, had no power to pass by-laws regulating the conduct of the separate and individual business of its members, and imposing penalties upon them for not carrying on such individual business according to prices fixed by the directors of the corporation.[232] But where the object of a corporation, all of whose members are engaged in a particular trade, is the carrying on of that trade in partnership, it seems that a by-law prohibiting any member of the corporation from carrying on such trade on his own account is good.[233] The difference between this and the Minnesota case, above cited, is that here the carrying on of the members' business jointly was the direct object of the corporation, while in the Minnesota case the business of the corporation was entirely separate from that of its members. Upon the same principle, an association of underwriters, incorporated for the express purpose of establishing and maintaining among its members uniformity in policies of insurance, may by by-law establish rates of

[231] Conniff v. Jarnour (1900) 31 Misc. Rep. 729, 65 N. Y. Supp. 317.

[232] Kolff v. St. Paul Fuel Exchange (1892) 48 Minn. 215, 50 N. W. 1036.

[233] Rex v. Fishermen of Tavershan (1798) 8 Term R. 197.

premium of insurance, and expel members who violate the provisions of such by-law.[234]

Same—Honesty in individual dealings.

§ 74. An incorporated board of trade, one of whose objects is stated to be the promotion of a high standard of commercial honor by securing among its members a prompt discharge of their pecuniary obligations, may provide by by-law that any member who fails to comply promptly with any business contract made with another member shall be expelled.[235] And such a corporation may also impose the penalty of expulsion upon any member who is guilty of flagrant breach of contract or any gross misconduct,[236] or breach of any contract, whether oral or written, even though not made at the corporation's place of business.[237] Although a mere breach of contract on the part of a member of a produce exchange, without any moral delinquency, is not within a by-law authorizing the managers, after a hearing, to expel a member for fraudulent breach of contract, or any proceedings inconsistent with just and equitable principles of trade, yet evidence that a member failed to perform a contract to deliver to another member a quantity of oil at a stipulated price, and that the price of oil had advanced between the date of the

[234] People v. Board of Fire Underwriters (1875) 54 How. Pr. (N. Y.) 240.

[235] People v. Chicago Board of Trade (1867) 45 Ill. 115.

[236] People v. New York Commercial Ass'n (1864) 18 Abb. Pr. (N. Y.) 282.

[237] Dickenson v. Chamber of Commerce (1871) 29 Wis. 45.

contract and the date set for performance, and that the delinquent member endeavored to shift the blame by stating that he was acting as agent for another, will support expulsion under such a by-law.[238]

Same—Requirement of arbitration between members.

§ 75. An organization of tobacco buyers and warehousemen, authorized by its articles to regulate members in buying, selling, and warehousing tobacco, may require members to execute bonds to secure to shippers the proceeds of their tobacco.[239] But a merchants' exchange has no right to pass a by-law which compels its members to submit their business controversies to arbitration, on pain of suspension or expulsion.[240] Where the by-laws of such a corporation provide for expulsion for improper conduct, without specifying what acts should be considered to constitute improper conduct, it has been held that a member who brought suit against the corporation to prevent it from disposing of a membership claimed by him was not thereby guilty of improper conduct, within the meaning of the by-laws.[241] A by-law of a commercial exchange providing that a member who is unable to meet his contracts with other members shall notify the president, who shall then post a notice, and that, if a member fails to

[238] People v. New York Produce Exchange (1896) 149 N. Y. 401, 44 N. E. 84.

[239] Warren v. Louisville Leaf Tobacco Exchange (Ky.; 1900) 55 S. W. 912.

[240] State v. Merchants' Exchange (1876) 2 Mo. App. 96.

[241] People v. New York Cotton Exchange (1876) 8 Hun (N. Y.) 216.

notify the president, then, upon satisfactory proof, the latter shall appoint a committee to investigate the case, and if they are satisfied of the failure, then they shall instruct the president to post the notice, is a valid by-law.[242] It seems that a mutual benefit society may provide by by-law that any member of the society who joins any standing army shall forfeit his membership, since becoming a soldier tends to increase materially the hazard of life insurance, but such a by-law is not broad enough to include the case of one who merely enlists in a volunteer regiment in time of war.[243]

Restraint of trade.

§ 76. By the common law, contracts in restraint of trade were regarded with disfavor, and the same rule applies as well to by-laws. Thus, it was held in an early English case that a by-law made by the Gunmakers' Society, to the effect that no member should sell a gun barrel to any person of the trade not a member of the society, either in London or within four miles thereof, was bad, as being in restraint of trade.[244] And the same objection applies to a by-law which in effect forbids the members from working at their trade or occupation at such prices or under such conditions as they choose to accept.[245] Thus, a by-law of an association of master

242 Sexton v. Commercial Exchange (1891) 10 Pa. Co. Ct. R. 607.

243 Franklin Beneficial Ass'n v. Commonwealth (1849) 10 Pa. St. 357.

244 Gunmakers' Soc. v. Fell (1742) Willes, 384.

245 People v. New York Ben. Soc. (1875) 3 Hun (N. Y.) 361; Thomas v. Musical Mut. Protective Union (1888) 49 Hun (N. Y.) 171, 17 N. Y.

plumbers, providing that each member of the association be required to report each week what work he had done, and, if it developed that such work had been done in competition with any other member, the member doing the work should pay into the treasury of the association a fixed sum, according to a schedule agreed upon and made part of the by-law, is void.[246] A benevolent society composed wholly of captains and owners of river steamboats has no right to adopt a by-law declaring that no member shall carry freight for less than certain rates.[247] And a board of underwriters, formed for the purpose of securing unanimity in the rates of premium, harmony in the conditions of insurance, and concurrence in the policies, has no right to adopt a by-law forbidding a member from employing more than one solicitor, regulating his salary and term of service, and prohibiting the employment of any solicitor who has left the service of another member of the board.[248]

Same.

§ 77. It was held as far back as Lord Coke's time that

St. Rep. 51, 2 N. Y. Supp. 195; Parker v. Toronto Musical Protective Ass'n (1900) 32 Ont. 305. Contra, Master Stevedores' Ass'n v. Walsh (1867) 2 Daly (N. Y.) 1; Lee v. Louisville, P. B. & R. Ass'n (1867) 65 Ky. 254.

[246] Bailey v. Master Plumbers (1899) 103 Tenn. 99, 52 S. W. 853. And see Milwaukee M. & B. Ass'n v. Niezerowski (1897) 95 Wis. 129, 70 N. W. 166.

[247] Sayre v. Louisville Union Benev. Ass'n (1863) 1 Duv. (Ky.) 143, 85 Am. Dec. 613.

[248] Huston v. Rentlinger (1891) 91 Ky. 333, 15 S. W. 867; People v. Chicago Live Stock Exchange (1897) 170 Ill. 556, 48 N. E. 1062.

no organization of dealers had any right to pass any by-law to prohibit any one from exercising his trade until he had presented himself before them to prove his apprenticeship, or until they allowed him to be a workman.[249] And a by-law restraining the number of apprentices to be taken by members of the company is bad.[250] Whether a press association may prohibit members from furnishing news to any one who shall have been declared by the board of directors or stockholders to be antagonistic to the association, or to any one else engaged in collecting news, unless with the written consent of the directors, is a point on which the decisions are conflicting.[251]

Same—Competition between exchange and its members.

§ 78. It has been held, however, that an incorporated board of trade has power to pass a by-law prohibiting its members from gathering in any public place in the vicinity of its exchange room, and forming a market for the purpose of trading for the future delivery of grain and provisions before or after the times when the exchange room is open for general trading;[252] and an article of a funeral directors' association, providing that members are not to

[249] Case of Tailors, etc., of Ipswich (1615) 11 Coke, 53. See, also, Clark v. Le Cren (1829) 9 Barn. & C. 52.

[250] Rex v. Coopers Company (1798) 7 Term R. 543.

[251] In Illinois, such a regulation has been held void. Inter-Ocean Pub. Co. v. Associated Press (1900) 184 Ill. 438, 56 N. E. 822. But it is good in Missouri. State v. Associated Press (1900) 159 Mo. 410, 60 S. W. 91. And see Mathews v. Associated Press (1891) 15 N. Y. Supp. 887.

[252] State v. Milwaukee Chamber of Commerce (1879) 47 Wis. 683.

render services for or furnish burial materials to any person who fails to discharge an existing indebtedness to any member of the association, is not unlawful.[253] It has been held in California that a corporation organized for the purpose of supplying water for the use of the owners and occupants of land within a particular district might adopt by-laws limiting the right to use the water to stockholders of the company who were landowners.[254]

Penalties.

§ 79. By-laws frequently create penalties for offenses against the corporation, or violations of its charter or by-laws. These penalties are of two sorts—First, a pecuniary mulct or fine; second, a deprivation of participation in the privileges of the corporation, which may be either permanent, as in case of expulsion or disfranchisement, or temporary, as in case of suspension. From what has been said in a previous chapter regarding the scope of by-laws,[255] it is evident that these penalties can only be inflicted upon members or officers of the corporation. Strangers are necessarily exempt. The manner of enforcing these penalties will be treated of in a subsequent chapter.[256]

Same—Reasonableness.

§ 80. By-laws imposing penalties must, of course, be

[253] Brewster v. Miller (1897) 101 Ky. 368, 41 S. W. 301.
[254] McFadden v. Los Angeles County (1888) 74 Cal. 571.
[255] See ante, c. 1, § 7.
[256] See post, c. 6.

reasonable.[257] Where a loan association is empowered by charter to impose fines on members for failure to pay assessments, but the charter is silent as to the extent of the power, the validity of the by-laws is to be tested by their reasonableness.[258] Thus a by-law empowering directors to fine members, without prescribing any limit in extent or amount, has been declared invalid.[259] For a single offense, a double penalty cannot be exacted.[260] Thus, a single fine may be imposed for failure to pay certain dues, but an additional fine cannot be imposed for each month that the member remains in default.[261] And even where the by-law provides that, "if any person shall neglect, omit, or refuse to pay his or her weekly dues at the time required hereby, he or she shall be fined ten cents weekly for each and every dollar remaining unpaid," only one fine can be imposed for nonpayment of the weekly installment as it falls due.[262] And where an offense is made punishable either by fine or expulsion, a member who has been fined and has paid his fine cannot afterwards be expelled for the same offense.[263]

257 Graham v. House B. & L. Ass'n (Tenn. Ch. App.; 1898) 52 S. W. 1011.

258 Vierling v. Mechanics' & Traders' S., L. & B. Ass'n (1899) 179 Ill. 524, 53 N. E. 979.

259 Albers v. Merchants' Exchange (1890) 39 Mo. App. 583.

260 McGannon v. Central Bldg. Ass'n (1882) 19 W. Va. 738; Forest City U. L. & B. Ass'n v. Gallagher (1874) 25 Ohio St. 208.

261 Lynn v. Freemansburg B. & L. Ass'n (1887) 117 Pa. St. 1; Forest City U. L. & B. Ass'n v. Gallagher (1874) 25 Ohio St. 208; Hagerman v. Ohio B. & S. Ass'n (1874) 25 Ohio St. 186. See, also, Dupuy v. Eastern B. & L. Ass'n (1896) 93 Va. 460, 25 S. E. 537.

262 Monumental Permanent B. & L. Soc. v. Lewin (1873) 38 Md. 445.

263 People v. New York Benev. Soc. (1875) 3 Hun (N. Y.) 364. But see Simek v. Lodge No. 86 (1898) 118 Mich. 81, 76 N. W. 124.

Same—Building and loan societies.

§ 81. A building and loan association has no right to impose by by-law fines for the nonpayment of interest on money borrowed from the association;[264] and a by-law which provides that any stockholder who fails to pay his monthly dues or interest shall pay a fine of ten per cent. per month upon the amount of his indebtedness will not be construed to refer to interest on any loan from the association to the stockholders.[265] A by-law of a building association imposing a fine of ten cents per share, each share being of the par value of one hundred and fifty dollars, for failure to pay an assessment thereon, is reasonable.[266] And so is a by-law providing that, for any default in payment of dues, as often as the same may be payable, the member shall forfeit the additional sum of ten cents for every such failure, and for every dollar thus unpaid.[267] A by-law providing for a fine of ten cents per share to be imposed for each and every month during delinquency has been held to be reasonable.[268] Likewise, a by-law imposing a fine of five cents a share for the first default, and ten cents for each subsequent default.[269] But a by-law providing that each stockholder who fails to pay his

[264] Parker v. United States B. L. & L. Ass'n (1882) 19 W. Va. 744; McGannon v. Central Bldg. Ass'n (1882) 19 W. Va. 738.

[265] Occidental B. & L. Ass'n v. Sullivan (1882) 62 Cal. 394.

[266] McGannon v. Central Bldg. Ass'n (1882) 19 W. Va. 741.

[267] Ocmulgee B. & L. Ass'n v. Thomson (1874) 52 Ga. 427.

[268] Roberts v. American B. & L. Ass'n (1896) 62 Ark. 572, 36 S. W. 1085.

[269] Iowa S. & L. Ass'n v. Heidt (1899) 107 Iowa, 297, 77 N. W. 1050.

monthly assessments shall be fined for the first and second weeks five cents, for the third week ten cents, for each share of stock that he owns, does not allow a fine of more than fifteen cents a week on each share, though there is a failure to pay assessments for several successive months.[270] A by-law imposing a fine of twenty-five cents per share for failure to pay interest installments when due, and ten cents per share for delinquent installments of principal, has been held to be oppressive.[271] And in another case it was said that, although a by-law imposing a fine of ten cents per share for each month on delinquent monthly installments might be legal, equity will not enforce it where the failure to pay is caused by demands in excess of the actual amount due, and by threats to foreclose.[272]

Same—Same.

§ 82. As by-laws of this kind occur most frequently in building and loan associations, the principles contained in the foregoing citations may be illustrated by saying that a building and loan association whose dues are payable monthly may provide by by-law that any member failing to pay his monthly dues shall be fined, that under such a by-law a member who fails to pay his January dues may

270 Gouchenour v. Sullivan B. & L. Ass'n (1889) 119 Ind. 441, 21 N. E. 1088.

271 Vierling v. Mechanics' & Traders' S., L. & B. Ass'n (1899) 179 Ill. 524, 53 N. E. 979.

272 Hughes v. Farmers' S. & B. & L. Ass'n (Tenn. Ch. App.; 1897) 46 S. W. 362.

be fined therefor, that if he defaults in his February dues he may be fined for that default also, but that no additional fine can be imposed on him in February for remaining in default as to his January dues.

Same—Collection of fines.

§ 83. Fines imposed by the by-laws may be collected by the corporation by an action at law against the delinquent member,[273] or by deducting the amount of such fines from any dividends or other money coming to him from the corporation.[274] But the corporation cannot provide by by-law that neglect to pay a fine shall effect a suspension of the member until the fine is paid, since that would be to inflict a penalty upon a penalty.[275] A by-law imposing a fine cannot direct that the money be paid to a third person.[276] A by-law which provides that a member failing to pay certain dues shall be fined not more than five pounds or less than two pounds, in the discretion of the officers, is not bad for uncertainty.[277] A corporation may provide that any member who is elected to office and refuses to accept the office shall be fined,[278] or that an officer neglecting his duties shall be fined.[279]

273 Graves v. Colby (1838) 9 Adol. & E. 356.

274 Child v. Hudson's Bay Co. (1723) 2 P. Wms. 208.

275 Adley v. Reeves (1813) 2 Maule & S. 53; Adley v. Whitstable Co. (1810) 17 Ves. 315. But see Hussey v. Gallagher (1878) 61 Ga. 92.

276 Graves v. Colby (1838) 9 Adol. & E. 366.

277 Piper v. Chappell (1845) 14 Mees. & W. 624.

278 Vintners' Co. v. Passey (1757) 1 Burrows, 235; Graves v. Colby (1838) 9 Adol. & E. 366.

279 Company of Tobacco Pipe Makers v. Woodroffe (1828) 7 Barn. & C. 838.

A by-law may authorize a member who is disorderly at a meeting to be fined, and provide for expulsion for nonpayment.[280]

Same—Expulsion.

§ 84. A by-law of a mutual insurance company providing that if any member shall, for thirty days after notice, neglect to pay his proportion of any loss, the directors may recover by suit the whole amount of his premium note, the proceeds to remain in the company's treasury, subject to losses that have accrued or that may accrue until the expiration of the term of the member's insurance, has been decided to be good.[281] A corporation cannot by by-law subject its stock to forfeiture for nonpayment of assessments upon it unless the power to pass such by-law is expressly granted by its charter;[282] nor can it provide by by-law for the forfeiture of other property.[283] Thus, a by-law of the Knights of Labor providing that, on suspension of a local assembly, its property shall be forfeited and shall vest in the secretary of the general assembly, has been held to be void, as seeking to confiscate, without judicial process, property of which the local as-

[280] Simek v. Lodge No. 86 (1898) 118 Mich. 81, 76 N. W. 124. But see People v. New York Benev. Soc. (1875) 3 Hun (N. Y.) 364.

[281] Cahill v. Kalamazoo Mut. Ins. Co. (1845) 2 Doug. (Mich.) 138, 43 Am. Dec. 462.

[282] In re Long Island R. Co. (1837) 19 Wend. (N. Y.) 37, 32 Am. Dec. 429.

[283] Kirk v. Nowill (1783) 1 Term R. 118.

sembly has the absolute title.[284] Of course provisions as to forfeiture must be observed by the corporation.[285]

Same—Same.

§ 85. The penalty of expulsion is frequently provided for in the by-laws. It has been held that where the charter of a corporation declared that, in certain cases, members might be expelled, but did not say expressly that there should be no expulsion except in the cases specified, a by-law providing that a member might be expelled for an offense not mentioned in the charter was not necessarily contrary to the charter.[286] It would seem to follow from this decision that the power to pass by-laws providing for expulsion of members is one of the inherent powers of corporations.

Same—For nonpayment of dues.

§ 86. A mutual benefit society may pass a by-law which provides that a member who fails to pay his dues within thirty days after publication of an assessment shall forfeit his membership,[287] or that he shall be suspended.[288]

[284] Wicks v. Monihan (1891) 130 N. Y. 232, 29 N. E. 139. See Austin v. Searing (1857) 16 N. Y. 112.

[285] Tourville v. Brotherhood of L. F. (1894) 54 Ill. App. 71; Catholic Order of Foresters v. Fitzpatrick (1895) 58 Ill. App. 376. But see Lesseps v. Architects' Co. (1849) 4 La. Ann. 316.

[286] Commonwealth v. St. Patrick Benev. Soc. (1810) 2 Bin. (Pa.) 448.

[287] Madeira v. Merchants' Exchange Mut. Ben. Soc. (1883) 16 Fed. 749.

[288] Palmetto Lodge v. Hubbell (1848) 2 Strob. (S. C.) 457, 49 Am. Dec. 604.

But where the provision of such by-law is that failure to pay an assessment within thirty days from the date of the notice shall be cause for suspension, a member cannot legally be suspended for nonpayment of an assessment of which he was not notified.[289] Where the charter of an incorporated board of trade empowers the corporation to expel members in the manner prescribed by its by-laws, it may pass a by-law providing for the expulsion of members for breach of any contract, oral or written,[290] or for fraudulent conduct.[291] By-laws of mutual benefit societies which provide that members in arrears shall be suspended from benefits for a certain period after such arrears have been paid have been declared void by some courts,[292] while other courts, in later decisions, have considered them reasonable.[293] A by-law forfeiting a member's funeral benefits in case his dues, although fully paid, were not paid at the precise time when they became due,

[289] Supreme Lodge, K. of H., v. Dalberg (1891) 138 Ill. 508, 28 N. E. 787, 3 Nat. Corp. Rep. 348.

[290] Dickenson v. Chamber of Commerce (1871) 29 Wis. 45.

[291] People v. New York Com. Ass'n (1864) 18 Abb. Pr. (N. Y.) 282.

[292] Cartan v. Father Matthew U. B. Soc. (1869) 3 Daly (N. Y.) 20; Brady v. Coachman's Benev. Ass'n (1891) 14 N. Y. Supp. 272; Buecking v. Blum Lodge, I. O. O. F. (1877) 1 City Ct. Rep. (N. Y.) 51.

[293] Jennings v. Chelsea Division B. & F. Soc. (1899) 28 Misc. Rep. 556, 59 N. Y. Supp. 862; Rubino v. Fraterna Ass'n (1899) 29 Misc. Rep. 339, 60 N. Y. Supp. 461; Alters v. Journeyman Bricklayers' Protective Ass'n (1898) 43 Wkly. Notes Cas. (Pa.) 336. And see Skelly v. Private Coachmen's B. & C. Soc. (1884) 13 Daly (N. Y.) 2, in which it was said that such a by-law would be binding as against a member who had assented to it.

is void.[294] But a mutual benefit association may provide by by-law that any member indebted for one year shall be held to be in arrears, and therefore not entitled to benefits.[295]

[294] Nelligan v. New York Typographical Union No. 6 (1886) 2 City Ct. Rep. (N. Y.) 261.

[295] Cowan v. New York Caledonian Club (1899) 61 N. Y. Supp. 714.

CHAPTER IV.

CONSTRUCTION OF BY-LAWS.

GENERAL PRINCIPLES.

Rules of statutory construction applicable.

§ 87. In construing by-laws, the courts make use of the same general rules as in construing statutes.[1] Thus, all the by-laws of a corporation should be construed together, so as to reconcile apparently conflicting provisions of different sections.[2] They ought to have a reasonable

1 Amesbury v. Bowditch Mut. Fire Ins. Co. (1856) 6 Gray (Mass.) 607.

2 Hartford v. Co-operative Mut. Homestead Co. (1880) 128 Mass. 494; O'Grady v. Knights of Columbus (1892) 62 Conn. 223, 25 Atl. 111; Badesch v. Congregation B. of W. (1898) 23 Misc. Rep. 160, 50 N. Y. Supp. 958.

construction,[3] and are not to be so construed as to make them void, although every particular reason for enacting them does not appear.[4] In other words, a by-law ought to be so construed, if possible, as to make it valid.[5] And in analogy to the rule of construction of penal statutes, it is held that by-laws imposing penalties and creating forfeitures are to be strictly construed.[6] So, also, are by-laws requiring submission of claims to the association as a condition precedent to resort to the courts.[7] And it has been held that, in mutual insurance controversies, that construction is to be adopted which is most favorable to the insured.[8] A by-law of a mutual benefit society which forbids its members joining the army is to be strictly construed.[9]

[3] Hibernia Fire Engine Co. v. Harrison (1880) 93 Pa. St. 269; Supreme Lodge, K. of P., v. Knight (1884) 98 Ind. 374; Maynard v. Locomotive Engineers' Mut. L. & A. Ins. Ass'n (1897) 14 Utah, 458, 47 Pac. 1030; Carney v. New York Life Ins. Co. (1900) 162 N. Y. 453, 57 N. E. 78, 49 L. R. A. 471, 20 Nat. Corp. Rep. 822.

[4] Vinter's Co. v. Passey (1757) 1 Burrows, 239; Hibernia Fire Engine Co. v. Commonwealth (1880) 93 Pa. St. 264.

[5] Reg. v. Saddlers' Co. (1863) 10 H. L. Cas. 426.

[6] Occidental B. & L. Ass'n v. Sullivan (1882) 62 Cal. 394; People v. St. George's Soc. (1873) 28 Mich. 261; Ottawa Union Bldg. Soc. v. Scott (1865) 24 Up. Can. Q. B. 341.

[7] Brotherhood of Railroad Trainmen v. Newton (1898) 79 Ill. App. 500.

[8] Finch v. Grand Grove, U. A. O. of D. (1895) 60 Minn. 308, 62 N. W. 384; Supreme Lodge National Reserve Ass'n v. Mondrowski (1899) 20 Tex. Civ. App. 322, 49 S. W. 919; Eastern B. & L. Ass'n v. Olmsted (1900) 16 App. D. C. 387.

[9] Franklin Beneficial Ass'n v. Commonwealth (1849) 10 Pa. St. 357. This decision was rendered soon after the Mexican war, and seems

Question of law or fact.

§ 88. The validity of a by-law is purely a question of law; it is for the judge, and not for the jury, to determine whether a by-law is reasonable, and what it means.[10] But where the language of a by-law contains ambiguities that require extrinsic evidence to explain them, it has been held in Wisconsin that the interpretation of such ambiguous by-laws is for the jury.[11] And the rule is laid down in New Jersey that, while the reasonableness of a by-law of a corporation is a question of law for the court, the reasonableness of a mere corporate regulation is a question of fact for the jury.[12] In case of an ambiguity in a by-law of a corporation, the court will not give it a construction opposed to any consistent and practical construction which it has received from members of the society, where such a construction is not unreasonable or

to be based on the theory that the by-law in question, while not exactly void as against public policy, was nevertheless of an unpatriotic and questionable character.

[10] State v. Overton (1854) 24 N. J. Law, 440, 61 Am. Dec. 675; Hibernia Fire Engine Co. v. Harrison (1880) 93 Pa. St. 269; Cartan v. Father Matthew U. B. Soc. (1869) 3 Daly (N. Y.) 22; People v. Throop (1834) 11 Wend. (N. Y.) 186; State v. Bank of Louisiana (1827) 5 Mart. (N. S.; La.) 327, 344; Hibernia Fire Engine Co. v. Commonwealth (1880) 93 Pa. St. 264; Scholl v. Sadoury (Pa.; 1894) 25 Pittsb. Leg. J. (N. S.) 43; Bearden v. People's B. L. & S. Ass'n (Tenn. Ch. App.; 1898) 49 S. W. 64; Carney v. New York Life Ins. Co. (1900) 162 N. Y. 453, 57 N. E. 78, 49 L. R. A. 471, 20 Nat. Corp. Rep. 822; Matthews v. Associated Press (1893) 136 N. Y. 333, 32 N. E. 981.

[11] State v. Conklin (1874) 34 Wis. 21.

[12] Morris & E. R. Co. v. Ayres (1862) 29 N. J. Law, 395; Compton v. Van Volkenburgh (1870) 34 N. J. Law, 134.

contrary to justice or morality or the rules of law and public policy.[13] But where the language used is clear and unambiguous, or the by-laws are susceptible of definite construction without extraneous proof, the construction given to the by-law by the officers of the corporation will not influence the courts in construing them.[14]

Partial invalidity.

§ 89. A single by-law may be good in part and bad in part,[15] but this can only be the case where the two parts are entirely distinct from each other. If the part which is void influences the whole, the entire by-law is void.[16] This rule applies also to different clauses of the same by-law. Thus, where one clause of a by-law contains an illegal restriction on the right of members to sue the corporation in any county except one, and also a valid limitation upon the time within which the members may bring suit against the corporation, the invalidity of the former provision will not affect the latter one.[17]

[13] State v. Conklin (1874) 34 Wis. 21; McDonough v. Hennepin County Catholic B. & L. Ass'n (1895) 62 Minn. 122, 64 N. W. 106.

[14] In re Bachman (1875) 2 Cent. Law J. 119, 12 Nat. Bank. Reg. 223; Wiggin v. Knights of Pythias (1887) 31 Fed. 122; Brendon v. Worley (1894) 8 Misc. Rep. 253, 28 N. Y. Supp. 557; Thomas v. Societa Italiani di Mutuo Soccorso (1895) 10 Misc. Rep. 746, 31 N. Y. Supp. 815; Badesch v. Congregation B. of W. (1898) 23 Misc. Rep. 160, 50 N. Y. Supp. 953.

[15] Rex v. Free F. & D. of Faversham (1799) 8 Term R. 352; Gunmakers' Soc. v. Fell (1742) Willes, 390.

[16] State v. Curtis (1874) 9 Nev. 337.

[17] Amesbury v. Bowditch M. F. Ins. Co. (1856) 6 Gray (Mass.) 607.

PARTICULAR BY-LAWS CONSTRUED.

Illustrations.

§ 90. In an English case it appeared that a person could not be in the livery of the Company of Poulters unless he was a freeman of the city of London. The company passed a by-law authorizing the admission into its livery of any freeman of the company. In order to admit the validity of the by-law, the courts construed it to mean any freeman of the company who was also a freeman of the city.[18] The rule that by-laws should be construed together was applied by the supreme court of Pennsylvania to a case where one by-law of a corporation gave the president the general charge and direction of the business of the company, as well as of all matters connected with the interests and objects of the corporation, and another by-law intrusted the doing of a particular act to a committee of the directors. The court held that the general words of the first by-law did not authorize the president to do the act which had been intrusted to the committee.[19] And a by-law of a banking corporation authorizing the president to certify checks drawn upon the bank has been construed not to extend to checks drawn by the president himself.[20] In a recent English case it appeared that an incorporated company of saddlers had passed a by-law to the effect that no person who had become a bankrupt or otherwise insolvent should be eligible as a director. The

[18] Poulters' Co. v. Phillips (1840) 6 Bing. N. C. 314.

[19] Twelfth St. Market Co. v. Jackson (1883) 102 Pa. St. 269.

[20] Claflin v. Farmers' & Citizens' Bank (1862) 25 N. Y. 293.

court construed this by-law as not applying to one who, though not able to pay all his debts in full, had committed no overt act of insolvency.[21] A by-law providing for arbitration in cases of dispute between a society and its members applies only to disputes regarding rights of membership, and not to a suit by the society against a member to foreclose a mortgage.[22] The reasonableness of by-laws of voluntary incorporated societies will not be passed on by the courts.[23]

By-laws relating to officers and agents.

§ 91. A contract for the employment during life of a person to act in a medical capacity for a life insurance company has been held to be in excess of the authority conferred upon the president and actuary by a by-law empowering them to "appoint, remove, and fix the compensation of each and every person, except agents, employed by the company, where the members of the board of trustees, to whom the management of the corporation was entrusted, held office only for four years.[24] Where the by-laws of an insurance company provide for the election of the president, vice president, and actuary by the board of trustees, and for the appointment by the board of resident physicians; that the supervisory and agency commit-

[21] Queen v. Saddlers' Co. (1863) 10 H. L. Cas. 404.

[22] Delaney v. Sandhurst Ben. Bldg. & Inv. Soc. (1879) 5 Vict. Law R. 189.

[23] Kehlenbeck v. Logeman (1882) 10 Daly (N. Y.) 447; Robinson v. Yates City Lodge (1877) 86 Ill. 599.

[24] Carney v. New York Life Ins. Co. (1900) 162 N. Y. 453, 57 N. E. 78.

tee should appoint the agents, and that the president and vice president should appoint all other persons employed, —an attempt on the part of the trustees to employ a retiring president in an advisory capacity is without authority.[25] A by-law providing that "no salary shall be paid to the officers, * * * except to the secretary," does not provide for the compensation of the secretary, but simply leaves it open to the directors to provide compensation for him.[26] And the same effect has been given to a by-law which declared that the salary of the president should be fixed by the board of directors.[27] Under by-laws which require all contracts and agreements entered into by the corporation to be signed by its president, and also require the secretary to issue and countersign all orders drawn on the treasurer, a note of the corporation signed by the president is binding, although not countersigned by the secretary.[28] In a case where the by-laws of a corporation engaged in buying and selling machinery authorized its president to buy and sell the articles in which the corporation dealt, without first obtaining the sanction of the directors, it was held that the president had authority to purchase a boiler on credit, and give the corporation's note therefor.[29] A by-law of a benefit association providing that the

[25] Beers v. New York Life Ins. Co. (1892) 66 Hun, 75, 20 N. Y. Supp. 788.

[26] Pfeiffer v. Lansberg Brake Co. (1891) 44 Mo. App. 59.

[27] Wood v. Lost Lake & C. Mfg. Co. (1890) 23 Or. 20, 23 Pac. 848.

[28] Peatman v. Centerville L., H. & P. Co. (1896) 100 Iowa, 245, 69 N. W. 541. See, also, post, c. 5, § 6.

[29] Siebe v. Joshua Hendy Machine Works (1890) 86 Cal. 390, 25 Pac. 14.

executive committee shall have power to reinstate a delinquent member at any time within a year, upon satisfactory evidence of good health, and payment of all delinquent premiums, does not bind the committee to reinstate.[30] A by-law of a savings bank requiring its "best efforts" to avoid mispayments calls for more than ordinary care and diligence.[31]

By-laws relating to meetings and elections.

§ 92. Where the by-laws require the directors to hold regular meetings in a specified place, special meetings are not within the restriction.[32] And where the by-laws authorize the president to call special meetings of the directors upon giving notice of the time and place thereof, and such place is not prescribed by by-law, the president may call a special meeting at a place other than the principal place of business of the company.[33]

Under charter provisions that alterations of the by-laws may be made only at a general meeting of the members convened by public notice, as in the case of election of directors, and that the president, when required by twenty members, shall call the general meeting by giving notice, as in case of election for directors, for the transaction of such business as may be specified in such notice, the by-laws cannot be changed at an annual meeting, where

[30] Harrington v. Keystone Mut. Ben. Ass'n (1899) 190 Pa. St. 77, 42 Atl. 523.

[31] Allen v. Williamsburgh Sav. Bank (1876) 2 Abb. N. C. 342.

[32] Ashley Wire Co. v. Illinois Steel Co. (1896) 164 Ill. 149, 45 N. E. 410.

[33] Corbett v. Woodward (1879) 5 Sawy. 403, Fed. Cas. No. 3,223.

notice is given only of the election of directors.[34] Under a by-law providing that, when the three directors constituting the board were present, a meeting could be held without notice, all three directors must not only be present, but must also consent to hold the meeting.[35] A by-law providing that a majority of the stock present in person or by proxy at any meeting of the stockholders shall constitute a quorum requires the presence in person or by proxy of a majority of all of the stock of the corporation to make a quorum.[36] Where the charter of a corporation provides that the corporate powers shall be exercised by a board of directors, to consist of twenty-three persons, and specifies power to adopt such by-laws as the president and directors shall judge necessary to carry on its business, but the charter is silent as to how many directors shall constitute a quorum for the transaction of business, the directors may by by-law enact that five directors, of whom the president shall always be one, or, in his absence, seven directors, shall constitute a quorum.[37] Where a corporation having a capital stock of thirty thousand dollars, divided into six hundred shares of fifty dollars each, adopted a by-law providing that at all meetings of the company there must be present at least one-third of the stockholders, holding at

[34] Mutual Fire Ins. Co. v. Farquhar (1898) 86 Md. 668, 39 Atl. 527.

[35] State v. Manhattan Rubber Mfg. Co. (1899) 149 Mo. 181, 50 S. W. 321.

[36] In re Election of Directors of Rapid Transit Ferry Co. (1897) 43 N. Y. Supp. 538.

[37] Hoyt v. Shelden (1858) 3 Bosw. (N. Y.) 267; Hoyt v. Thompson's Ex'r (1859) 19 N. Y. 215.

least one-third of the shares of stock, to constitute a quorum, and only ninety-six shares of the stock were subscribed for or issued, it was held that the presence at a stockholders' meeting of one-third of the stockholders in number, holding at least one-third of the ninety-six shares issued or subscribed for, was sufficient to constitute a quorum.[38]

By-laws relating to dues and assessments.

§ 93. Where the by-laws of a mutual benefit association require notice of each assessment to be given to each member, and provide that failure to pay such assessment within thirty days from the date of notice shall be cause for suspension, a member cannot be suspended for nonpayment of an assessment of which it is not shown that he was notified.[39] And where the by-laws require assessments to be paid within a certain number of days from the date of the notice thereof, the date will be considered to

[38] Castner v. Twitchell-Champlin Co. (1898) 91 Me. 524, 40 Atl. 558. This case overrules a previous decision of the same court (Ellsworth Woolen Mfg. Co. v. Faunce [1887] 79 Me. 440), where an election of directors was held illegal under the following facts: The by-law provided that "the capital stock of the company shall be $10,000, divided into 400 shares of $25 each," and that "no business shall be transacted at any meeting of the stockholders, unless a majority of the stock is represented, except to organize the meeting and adjourn to some future time." But 243 shares had been subscribed for. It required 201 shares to constitute a majority, and that number was not present, but the meeting considered that the by-law referred to the majority of the actually subscribed stock, and proceeded to elect directors, which election was finally held illegal.

[39] Supreme Lodge, K. of H., v. Dalberg (1891) 138 Ill. 508, 28 N. E. 785.

mean the date it was delivered or received, not the date written in the notice or the date of mailing.[40] A by-law providing for notice of arrears by the financial secretary means written notice; therefore a verbal statement that a delinquent would better "square his account" is insufficient.[41] Where an insurance company's articles of association provided that members should pay their assessments within thirty days after receiving notice thereof, before a policy can be forfeited for nonpayment, actual notice to the member must be shown, though a by-law provided that notice of assessments should be given by publication in one or more newspapers.[42] Under a by-law providing for forfeiture for failure to pay any assessment within thirty days from the date of the notice thereof, a notice which is mailed so as to reach the insured November 30th, demanding payment on or before December 28th, is not sufficient to sustain a forfeiture.[43] In another case, the by-laws of a benefit association required the collector to notify members of assessments, and provided that notice should be personal or by mail at the last known post-office address or residence, and that a member failing to pay within thirty days from date of the notice should be suspended. A member who was ill sent the

[40] Protection Life Ins. Co. v. Palmer (1876) 81 Ill. 88; Grand Lodge, I. O. of M. A., v. Besterfield (1890) 37 Ill. App. 522.

[41] Schafer v. United Brotherhood of Carpenters (1898) 22 Misc. Rep. 363, 49 N. Y. Supp. 151.

[42] Schmidt v. German Mut. Ins. Co. (1892) 4 Ind. App. 340, 30 N. E. 939.

[43] United States Mut. Acc. Ass'n v. Mueller (1894) 151 Ill. 254, 37 N. E. 882.

amount of the assessment, together with notice of a change of residence, to the lodge. The number of the member's house was, by mistake, copied incorrectly on the books, and notice of a subsequent assessment, sent to such address, was never received by the member. It was held that failure to pay such assessment within the required time did not work a suspension.[44] Under by-laws requiring notice of assessments, but not prescribing the form, a notice specifying the number of the assessment, and bearing the seal of the association, received by a member inclosed in an envelope addressed to him at his residence, is sufficient, although not signed by the officer whose duty it was to give the notice, and not addressed to the member on the notice itself.[45] Where the rules of a benefit association required the supreme secretary, when the benefit fund was insufficient, to collect a fixed assessment, such notice from the supreme secretary was held to be presumptive proof that the assessment was necessary.[46] Under a by-law requiring notice that, if arrears of dues were not paid on or before the first regular meeting of the following month, the member would be suspended, a notice to appear in the lodge hall at the meeting to pay the arrears, on penalty of suspension, is not binding, since under the by-law the member might send the money on or before the meeting,

[44] Waterworth v. American Order of Druids (1895) 164 Mass. 574, 42 N. E. 106.

[45] Hansen v. Supreme Lodge, K. of H. (1892) 140 Ill. 301, 29 N. E. 1121.

[46] Demings v. Supreme Lodge, K. of P. (1892) 131 N. Y. 522, 30 N. E. 572.

while the notice required him to attend in person.[47] A continuing agreement that a member's dues should be paid out of printing and supplies to be furnished by him is not in violation of a by-law providing that all dues must be paid by the twenty-eighth of each month, since such agreement is equivalent to advance payment.[48] Where the by-laws and pass-book of a building and loan association show that payments of dues should be made to the treasurer, payment made to the secretary will not bind the association.[49]

By-laws relating to designation of beneficiary.

§ 94. Where a benefit society has prescribed by its by-laws in what manner a member may change his beneficiary, that form must, of course, be followed to make a valid change.[50] But where a benefit certificate has been lost, so that it is impossible for a member to change the beneficiary by indorsement thereon, as required by the by-laws, equity will recognize and enforce a designation of a new beneficiary by will, or by any other method which plainly indicates the intention of the member.[51]

Under a by-law providing that every lodge shall keep a book in which every member shall declare in writing, upon

[47] District Grand Lodge, No. 4, O. K. S. B., v. Menken (1896) 67 Ill. App. 576.

[48] Bixby v. Grand Lodge, A. O. U. W. (1897) 101 Iowa, 505, 70 N. W. 737.

[49] Killian v. Building & Loan Ass'n (1898) 21 Pa. Co. Ct. Rep. 58.

[50] Masonic Mut. Life Ass'n v. Jones (1893) 154 Pa. St. 107, 26 Atl. 255; Wilson v. Bryce (1899) 43 App. Div. 491, 60 N. Y. Supp. 132.

[51] Grand Lodge, A. O. U. W., v. Nell (1892) 90 Mich. 37, 51 N. W. 269.

a blank form therein provided, to whom the amount of his benefit shall be paid upon his death, and requiring that the names of such beneficiaries shall be written in full, a designation, "Payable to such parties as provided for in my will," is good.[52] But a rule requiring the insured to file a written petition with his court, stating the desired change of beneficiary, is not complied with by writing a note to the secretary, which the secretary destroyed as a mere memorandum, after changing the beneficiary in the original certificate; nor is failure to file such a petition excused by the failure of the supreme court to provide application blanks in accordance with another rule.[53] When the by-laws provide that a change of beneficiaries can be made only by surrender of the old certificate, and the issue of a new one, a change cannot be made from a wife to another by will.[54] The administrator of the beneficiary named in the certificate is entitled to the proceeds, though the beneficiary died before the insured, where the by-laws provide that the insured may change the beneficiary at will in writing on the certificate, and the insured failed to designate another beneficiary after the one named.[55]

In an Illinois case it appeared that one by-law of a benefit society provided that "no will shall be permitted to control the appointment or distribution of, or rights of any

[52] Grand Lodge v. Ohnstein (1898) 85 Ill. App. 355.

[53] Independent Order of Foresters v. Keliher (1899) 36 Or. 501, 59 Pac. 324, 1109, 60 Pac. 563.

[54] Charch v. Charch (1898) 57 Ohio St. 561, 49 N. E. 408.

[55] Thomas v. Cochran (1899) 89 Md. 390, 43 Atl. 792.

person to, any endowment payable by this order." Another provided that, "in the event of the death of all the beneficiaries designated by a member in accordance with the by-laws of the order before the death of such member, if he shall have made no further disposition thereof, the benefit shall be paid" to certain designated persons. It was held that the first by-law was intended to secure the rights of persons named as beneficiaries in the certificate from subsequent disposition of the endowment by the member's will during their lifetime, and the second recognized the member's right, upon the death of his named beneficiary, to dispose of the endowment by will to any person eligible as a beneficiary.[56] Under a by-law providing that, on the death of a member, it will pay a certain sum to his widow, child or children, parent or parents, etc., in whole or in part, in such proportions to each as the same shall have been assigned and made payable by the member by written notice filed with the secretary prior to his decease, the association is liable, in the absence of any assignment filed by such member, to pay to the persons designated, in the order named, the whole sum specified in the by-law.[57] A by-law providing that, in the absence of a widow or children, the fund shall be paid to the next of kin of the deceased within the limit of representation prescribed by statute, has been construed to mean the statute existing at the time of the member's decease.[58]

[56] High Court, C. O. of F., v. Malloy (1897) 169 Ill. 58, 48 N. E. 392.

[57] Munroe v. Providence Permanent F. R. Ass'n (1896) 19 R. I. 491, 34 Atl. 997.

[58] Kemp v. New York Produce Exchange (1898) 34 App. Div. 175, 54 N. Y. Supp. 678.

In a recent Massachusetts case a by-law provided for a benefit to be paid to the person designated by a member in writing on the certificate or otherwise, and, in the absence of such designation, to the widow, if any, and so on. Afterwards the by-law was amended by making all benefits payable to such person or persons as the member's certificate requires who may have an insurable interest, as provided in the section defining the object of the association to be to assist the widows or orphans, or such other persons as may hold an assignment of the certificate at the time of the member's death. The society requested outstanding certificates to be surrendered, and new certificates taken out, but the deceased member never took out a new certificate, nor designated a beneficiary in any way. The court held that the fund went to the widow, and not to the administrator of the estate of the deceased.[59] Where, under a by-law providing that no certificate shall be made payable to "estate," nor to other than those related by ties of consanguinity or affinity, a member, in his petition for membership, declares the benefit payable to his fiancee, it has been held that, in the absence of a clause prohibiting the corporation from contracting specially with a member for payment to other than the persons named, the benefit would go to the fiancee, she still being such at the member's death.[60]

[59] Hadley v. Odd Fellows' Beneficial Ass'n (1899) 173 Mass. 583, 54 N. E. 345.

[60] Jacobs v. Artisans' Order of Mutual Protection (1900) 9 Pa. Dist. Rep. 54.

In an Illinois case it appeared that, although the statute required that benefits should be payable to an affianced husband or wife, a by-law provided that they should be payable only to kinsmen and those dependent upon the deceased. It was held that, where the deceased, in his application, directed that the benefit should be payable to his affianced wife, though the society refused to issue to him a certificate naming her as beneficiary, she could maintain an action therefor.[61] Where the constitution and by-laws of a mutual benefit association recognize as beneficiaries the heirs of a deceased member, the word "heirs," if not otherwise limited, means those who are entitled to receive the estate under the statute.[62] Where the by-laws provided that a member might surrender his relief-fund certificate, and a new certificate would be issued payable to the persons directed, and a member, holding a certificate which designated his daughter as beneficiary, inserted, on his second marriage, after his daughter's name, "and my wife," the wife acquired no title to any part of the proceeds on the member's death.[63] It has been held that, where the by-laws reserve to members the power to change beneficiaries at will, a beneficiary acquires no vested interest in the fund.[64]

[61] Wallace v. Madden (1897) 168 Ill. 356, 48 N. E. 181.

[62] Hanna v. Hanna (1895) 10 Tex. Civ. App. 97, 30 S. W. 820.

[63] Thomas v. Thomas (1892) 131 N. Y. 205, 30 N. E. 61.

[64] Sabin v. Phinney (1892) 134 N. Y. 423, 31 N. E. 1087; Sofge v. Supreme Lodge, K. of H. (1897) 98 Tenn. 446, 39 S. W. 853; Lane v. Lane (1897) 99 Tenn. 639, 42 S. W. 1058.

By-laws relating to benefits and loans.

§ 95. Compliance with the requirement of a benefit society that a member claiming sick benefits must furnish a statement of his case is not excused by his insanity.[65] And where the by-laws provide that no sick member shall recover benefits without producing a sworn certificate of a physician, the fact that the physician who attended a sick member refused to give a sworn statement because of conscientious scruples against making an oath does not excuse compliance.[66]

A by-law of a building and loan association providing that loans shall be made only to members does not invalidate a loan which a member and an outsider jointly obligate themselves to pay.[67] Where the by-laws of a building association provide that borrowers from it "shall secure the payment of said loans, with legal interest, by satisfactory bond or mortgage upon real estate, the officers have authority to take both securities.[68]

Where the by-laws provide that a member who shall find himself incapable of working by reason of sickness or accident shall receive a certain benefit, a member who becomes totally blind as the result of a disease produced by an accidental injury to one of his eyes is entitled to the benefit.[69] Under a by-law providing that a member who

[65] Walsh v. Consumnes Tribe, No. 14, I. O. R. M. (1895) 108 Cal. 496, 41 Pac. 418.

[66] Audette v. L'Union St. Joseph (Mass.; 1901) 59 N. E. 668.

[67] People's B. & L. Ass'n v. Billing (1895) 104 Mich. 186, 62 N. W. 373.

[68] Juniata B. & L. Ass'n v. Hetzel (1883) 103 Pa. St. 507.

[69] Moze v. Societe de Bienfaisance St. J. B. (1897) 167 Mass. 298, 45 N. E. 749.

becomes permanently disabled from following his "usual or some other occupation" should receive a certain benefit, a member who is disabled from following his usual employment is entitled to such benefit, though he is not disabled from following some other employment.[70] But a member of a benefit society who loses the fingers of one hand cannot recover under a by-law providing for payment of part of the endowment to those "who shall become permanently and totally disabled * * * to perform or direct any kind of labor or business."[71] Insanity is a sickness, within the meaning of a by-law making an allowance for sick benefits.[72] A provision in the by-laws of a benefit society that a member obtaining membership by false statements as to his age shall be expelled, and forfeit all benefits, relates to proceedings which may be taken during a member's lifetime, and does not prevent the beneficiary from recovering after his death.[73] A by-law allowing a member a sick benefit of five dollars "per week during thirteen weeks only of the same year" refers to a period of a year, and not to a calendar year.[74]

[70] Neill v. Order of United Friends (1894) 78 Hun, 255, 28 N. Y. Supp. 928.

[71] Supreme Tent, K. of M., v. King (1898) 79 Ill. App. 145.

[72] Robillard v. Societe St. J. B. de C. (1898) 21 R. I. 348, 43 Atl. 635.

[73] Supreme Council of C. B. L. v. Boyle (1894) 10 Ind. App. 301, 37 N. E. 1105.

[74] Thibeault v. St. Jean Baptist Ass'n (1899) 21 R. I. 157, 42 Atl. 518.

CHAPTER V.

EFFECT OF BY-LAWS.

ON THIRD PERSONS.

ON THE CORPORATION.

Application to corporation.

§ 96. As a general rule, the corporation itself is sub-

ject to the restrictions contained in its by-laws,[1] and is entitled to rely upon such by-laws in its dealings with its members and with third persons. Thus, it has been held that a transfer of stock not entered on the books of the corporation in accordance with its by-laws is invalid as against the corporation.[2] And where the authority of the officers is defined by the by-laws, acts of such officers in excess of the powers conferred by the by-laws do not, in the absence of ratification, bind the corporation.[3]

Same.

§ 97. A savings bank is liable to its depositors for money paid out on forged orders not properly witnessed as required by the by-laws, since the depositors have a right to rely on the published by-laws as to the mode in which money can be withdrawn.[4] And under by-laws providing that a new member must be approved by a vote of the society, and that the object for which a special meeting is called must be stated, members cannot be admitted at a special meeting held under a call which contained no article for the admission of members.[5] Where the by-laws provide for the imposition of a specified fine for a certain violation of the by-laws, the society has no authority to im-

[1] Covenant Mut. Ben. Ass'n v. Spies (1885) 114 Ill. 463, 468, 2 N. E. 482.

[2] Stockwell v. St. Louis Mercantile Co. (1880) 9 Mo. App. 133.

[3] Adriance v. Roome (1868) 52 Barb. (N. Y.) 411.

[4] People's Sav. Bank v. Cupps (1879) 91 Pa. St. 315.

[5] Gray v. Christian Society (1884) 137 Mass. 331.

pose a larger fine.[6] Of course a corporation is held to a strict observance of all the formalities prescribed by the by-laws in the infliction of penalties and forfeitures.[7] Where an officer of a corporation receives money contrary to the by-laws, and embezzles the same, the corporation cannot recover therefor on a bond given by him conditioned for his accounting for all money received by him, since the corporation is bound by the by-law.[8]

Rights under waiver by law.

§ 98. A corporation cannot assert rights under a by-law which it has waived. Thus, where a by-law declaring a lien on the stock directs that the certificates of stock shall contain notice of such provision, the corporation cannot assert such lien as against purchasers of stock, where the certificates contain no such notice.[9] And where a by-law requires the consent of the directors to a transfer of stock by a stockholder who is indebted to the company, but in the practice of the company such cases were never brought before the board, a transfer by such stockholder, made without such consent, but in the presence of the secretary, according to the usage of the company, is good as against the company.[10]

[6] Meurer v. Detroit Musicians B. & P. Ass'n (1893) 95 Mich. 451, 54 N. W. 954.

[7] Supreme Lodge, K. of H., v. Dalberg (1891) 138 Ill. 508, 28 N. E. 785; Wachtel v. Noah W. & O. Benev. Soc. (1881) 84 N. Y. 28; Davis v. Atkinson (1900) 67 N. Y. Supp. 851. And see post, c. 6.

[8] Sperry v. Dransfield (1884) 2 New Zealand (Sup. Ct.) 319.

[9] Bank of Holly Springs v. Pinson (1880) 58 Miss. 438.

[10] Chambersburg Ins. Co. v. Smith (1849) 11 Pa. St. 120.

Where an assessment was paid in accordance with a certain method sanctioned by the lodge, but different from that prescribed by the by-laws, the association is estopped from declaring a forfeiture.[11]

Same.

§ 99. So, too, a policy of insurance issued by a mutual insurance company in a case where insurance is forbidden by the by-laws is not invalid, since the issue of the policy is a waiver of the by-law.[12] Where by-laws which have been made by the directors, and which the directors are therefore competent to waive, prescribe what notice must be given for meetings of the directors, a contract entered into by the directors in behalf of the corporation at a meeting of which no such notice has been given is not invalid, since the action of the directors in entering into a contract at such a meeting would, so far as the other party to the contract is concerned, constitute a waiver of the by-law.[13] And a by-law requiring the clerk of the corporation to be sworn does not authorize the corporation, when sued for dividends, to set up in defense that the clerk who executed

[11] National Gross Loge v. Jung (1896) 65 Ill. App. 313. See, also, Piquenard v. Libby (1879) 7 Mo. App. 564; Patrons' Mut. Aid Soc. v. Hall (1898) 19 Ind. App. 118, 49 N. E. 279.

[12] Campbell v. Merchants' & Farmers' Mut. Fire Ins. Co. (1858) 37 N. H. 41.

[13] Samuel v. Holladay (1869) 1 Woolw. 400, Fed. Cas. No. 12,288, 1 Am. Corp. Cas. 139; Samuels v. Holliday (1868) McCahon (Kan.) 214. A contrary conclusion was reached in a California case, in which it did not appear who adopted the by-law. Smith v. Dorn (1892) 96 Cal. 73, 30 Pac. 1024, 5 Nat. Corp. Rep. 150.

the instrument under which the plaintiff claims title to his shares of stock was not sworn.[14]

Where the by-laws of an unincorporated benefit association provide that, if the dues of its members should fall below a certain sum per month for three successive months, it should be disbanded, that contingency does not *ipso facto* terminate the association, since the by-law may be waived.[15]

Estoppel to urge.

§ 100. A corporation cannot escape liability upon executed contracts by virtue of its own by-laws. Thus, where a corporation has received the benefit of services, it cannot repudiate its indebtedness therefor on the ground that its by-laws do not permit it to run in debt without the order of its directors,[16] or that the contract was made by one officer, while the by-laws directed it to be made by another.[17] And the by-law of a manufacturing corporation limiting the purchasing power of the officers does not invalidate an executed purchase in excess of such limitation, where the seller had no notice of the by-law.[18] A by-law of a savings bank that deposits may be paid to any one presenting the pass-book does not, though assented to by the depositors, relieve the bank from the duty of exercising reasonable care.[19]

[14] Hastings v. Blue Hill Turnpike Corp. (1829) 9 Pick. (Mass.) 82.
[15] Atnip v. Tennessee Mfg. Co. (Tenn. Ch. App.; 1898) 52 S. W. 1093.
[16] Donovan v. Halsey Fire Engine Co. (1885) 58 Mich. 38.
[17] Smith v. Martin Anti-Fire Car Heater Co. (1892) 19 N. Y. Supp. 285.
[18] Ten Broek v. Winn Boiler Compound Co. (1885) 20 Mo. App. 19.
[19] Kimball v. Norton (1879) 59 N. H. 1; Appleby v. Erie County Sav-

Effect of violation.

§ 101. By-laws of a corporation as to periodical examinations of its business by the directors are for its own security only, and the failure of the company to enforce such by-laws does not discharge the sureties upon the bonds of its officers.[20] For the same reason, the neglect by its officers in a single instance to obey a by-law which directs cancellation of all certificates of stock surrendered for transfer before issuing new certificates is not such negligence as will render a corporation liable, at the suit of an innocent third party, for the value of certificates which should have been canceled, but which were fraudulently pledged to such party by the manager of the corporation as security for a loan made to himself personally.[21]

Where the by-laws require the corporate meetings to be held at the corporation's counting room, and it appears that a meeting was held at the dwelling house of its general agent, it will be presumed, in the absence of evidence to the contrary, that the counting room was for the time being at that place.[22] If a corporation refuses to grant to a member any benefits that have been secured to him by its

ings Bank (1875) 62 N. Y. 17; Kummel v. Germania Savings Bank (1891) 127 N. Y. 488, 28 N. E. 398; Wall v. Emigrant Industrial Savings Bank (1892) 19 N. Y. Supp. 194.

[20] State v. Atherton (1867) 40 Mo. 209; Morris Canal & Banking Co. v. Van Vorst (1847) 21 N. J. Law, 100.

[21] Knox v. Eden Musee American Co. (1896) 148 N. Y. 441, 42 N. E. 988.

[22] McDaniels v. Flower Brook Mfg. Co. (1850) 22 Vt. 274.

by-laws, the member has a right of action against the corporation therefor;[23] and a corporation has no right to punish a member for acts which, under the by-laws, are not punishable.[24]

Same—Not ground for dissolution.

§ 102. Where the statute under which a corporation is organized provides that the directors shall be annually elected by the stockholders at such time and place and upon such notice as shall be directed by the by-laws, an annual meeting cannot be held except by unanimous consent until notice of such meeting is given according to the by-laws.[25] The act of an association in deposing its president in a manner contrary to the by-laws, although illegal, is not a ground for decreeing the dissolution of the corporation, where the president himself acquiesces at the time in the act of the association.[26] A by-law of a corporation providing that it shall be dissolved on a certain day puts an end to it on that day; its continuance is merely permissive, but it is subject to the same rules so long as the stockholders continue to act.[27] It has been held that, in an action where a loan made by a corporation would be usurious unless the corporation were a building and loan association, the by-laws are admissible in evidence against

[23] Dolan v. Court of Good Samaritan (1880) 128 Mass. 437.

[24] People v. American Institute (1873) 44 How. Pr. (N. Y.) 468.

[25] San Buenaventura Mfg. Co. v. Vassault (1875) 50 Cal. 537.

[26] Industrial Trust Co. v. Green (1892) 17 R. I. 586, 23 Atl. 914.

[27] Merchants' & Planters' Line v. Waganer (1882) 71 Ala. 581, 10 Am. Corp. Cas. 12.

the corporation to show that its business was not that of a building and loan association.[28]

ON THE DIRECTORS.

Right to waive.

§ 103. Directors are, of course, presumed to be cognizant of the by-laws.[29] But in considering the effect of by-laws upon directors, there is an important distinction to be made between by-laws adopted by the stockholders and by-laws adopted by the directors themselves. When by-laws are adopted by stockholders, they are binding upon the directors in the same way that the charter and the statutes are. The directors have no more power to modify or waive them than they have to modify or waive the provisions of the charter or of the statutes; but where the by-laws have been made by the directors, they are binding upon the directors to no greater extent than an act of the legislature is binding upon a subsequent legislature. The power that made can also repeal. A by-law made by the directors may be waived by them.[30]

Violation.

§ 104. Where, however, the directors violate a by-law made by the stockholders, they are responsible to the corporation therefor. Thus, where the directors of a building and loan association make loans in violation of the by-

[28] White v. Interstate B. & L. Ass'n (1898) 106 Ga. 146, 32 S. E. 26.

[29] Mutual Life Ins. Co. v. McSherry (1887) 68 Md. 41, 11 Atl. 577.

[30] Campbell v. Merchants' & Farmers' Mut. Fire Ins. Co. (1858) 37 N. H. 41.

laws, they are liable to the association for any loss thereby caused.[31] Where directors meet at a place other than that designated in the by-laws, to elect a president, such election is void.[32] It has been held that a by-law of an insurance company which provides that a special meeting of the company shall be called by the president, or, in his absence, by the secretary, on application made in writing by ten members, does not by implication preclude the directors from calling special meetings without such application.[33] But where the by-laws provide that all meetings of the directors shall be specially called, a meeting of a part, although a majority, of the members of the board of directors, not called in pursuance of the by-laws, is not a legal meeting.[34]

By-laws regulating powers.

§ 105. Where the by-laws of a mutual benefit insurance company provide that assessments shall be levied by the board of directors, the board cannot delegate that power to the president and secretary.[35] Under a by-law attached to an insurance policy authorizing the directors to receive, as a member, an assignee thereof, on his giving a new

[31] Citizens' Building Ass'n v. Coriell (1881) 34 N. J. Eq. 383.

[32] Waterman v. Chicago & I. R. Co. (1892) 139 Ill. 658, 29 N. E. 689.

[33] Citizens' Mut. Fire Ins. Co. v. Sortwell (1864) 8 Allen (Mass.) 217. But see Smith v. Dorn (1892) 96 Cal. 73, 30 Pac. 1024, 5 Nat. Corp. Rep. 150.

[34] Mast Buggy Co. v. Litchfield F. H. & I. Co. (1893) 55 Ill. App. 98.

[35] Garretson v. Equitable Mut. L. & E. Ass'n (1895) 93 Iowa, 402, 61 N. W. 952.

note, no acts or declarations of the directors tending to create a membership without taking a new note can operate as an estoppel against the company.[36] Where a by-law provides that any person chosen a director should cease to be one when he ceased to be a proprietor, this, by implication, renders any one not a proprietor ineligible to the office.[37]

On the Officers.

Application to officers.

§ 106. By-laws of a corporation are binding upon its officers, even though such officers are not members of the corporation.[38] The reason is that the officers are presumed to have access to the records of the corporation, and therefore to be fully advised in regard to its by-laws. Having this notice of the by-laws, their acceptance of office implies an assent to them. The enumeration in the by-laws of certain specified powers bestowed upon the officers does not, at least so far as third persons are concerned, forbid the officers from binding the corporation by acts which, though not within the enumerated powers, are within the authority which the titles of the officers

[36] Cannon v. Farmers' Mut. Fire Ass'n (1899) 58 N. J. Eq. 102, 43 Atl. 281.

[37] Despatch Line of Packets v. Bellamy Mfg. Co. (1841) 12 N. H. 205.

[38] Bank of Wilmington v. Wollaston (1840) 3 Harr. (Del.) 90; Hunter v. Sun Mut. Ins. Co. (1874) 26 La. Ann. 13; Ellis v. North Carolina Inst. for Deaf, Dumb & Blind (1873) 68 N. C. 423, 5 Am. Corp. Cas. 591. And see Jones v. Vance Shoe Co. (1900) 92 Ill. App. 158.

usually imply.[39] Thus in a case in Illinois it appeared that a deed purporting to convey land from a railroad company was executed by its president alone, while the by-laws required that all deeds should be countersigned by the secretary. The court held that the deed was good, saying: "By-laws are private, and only accessible to the officers of the company. Strangers to the company cannot be bound by the rules adopted for the government of the company. The charter did not require the deed to be attested by the secretary, and persons not officers of the company cannot be required to know the provisions of their by-laws."[40]

Effect of violation.

§ 107. Where the by-laws provide that meetings of stockholders shall be called by the directors, the president cannot, without the action of the board, call such a meeting.[41] Where the by-laws of a bank forbid loans to be made without the approbation of the finance committee, and the president makes a loan without submitting it to the committee, he is responsible to the bank for any loss that may result from such loan.[42] Officers empowered to purchase property may contract for payment, notwithstanding a by-law forbidding the contracting of any debt

[39] Fay v. Noble (1853) 12 Cush. (Mass.) 1; Smith v. Martin Anti-Fire Car Heater Co. (1892) 19 N. Y. Supp. 285; Arapahoe C. & L. Co. v. Stevens (1889) 13 Colo. 540, 22 Pac. 825.

[40] Smith v. Smith (1872) 62 Ill. 496.

[41] State v. Pettineli (1875) 10 Nev. 141.

[42] Oakland Bank v. Wilcox (1882) 60 Cal. 140.

except by order of the board of directors.[43] Where the by-laws of a building association required dues and assessments to be paid to the secretary at weekly meetings, and also required him to give bond for the faithful performance of his duties, such bond covers all money received by him in his official capacity, whether paid at the times required or not.[44]

On the Stockholders or Members.

Application to stockholders and members.

§ 108. Stockholders and members of a corporation are, of course, bound by the by-laws.[45] They are bound by virtue of their assent to the by-laws.[46] Sometimes such assent is express, as in cases where each member signs the by-laws, or where he signs a contract with the corporation by which he agrees to become bound by the by-laws. But even where there is no such express assent, the mere act of joining the corporation, or of purchasing stock therein, is a constructive assent to the legal by-laws of the corporation.[47] The consideration of such assent is the privilege

[43] Arapahoe C. & L. Co. v. Stevens (1889) 13 Colo. 534, 22 Pac. 823.

[44] Tyler v. Old Post Bldg. Ass'n (1882) 87 Ind. 323.

[45] Covenant Mut. Ben. Ass'n v. Spies (1885) 114 Ill. 463, 468, 2 N. E. 482; Espy v. American Legion of Honor (1893) 7 Kulp (Pa.) 134.

[46] State v. Overton (1854) 24 N. J. Law, 440, 61 Am. Dec. 675; Morgan v. Bank of North America (1822) 8 Serg. & R. (Pa.) 88, 11 Am. Dec. 575; Thomas v. Musical Mut. Protective Union (1890) 121 N. Y. 45, 56, 24 N. E. 24.

[47] Anacosta Tribe v. Murbach (1858) 13 Md. 94; Baur v. Samson Lodge (1885) 102 Ind. 267; Sassenscheidt v. Fresco Painters' Ben. Union (1875) 1 City Ct. Rep. (N. Y.) 9; Tuttle v. Walton (1846) 1 Ga.

of becoming a member of the association.[48] It is not even necessary to show that the stockholders or members have actual knowledge of the by-laws, since they are chargeable with notice of them from the mere fact of their connection with the corporation.[49] Thus, a bank stockholder who borrows money from the bank is chargeable with notice of a by-law forbidding the transfer of stock by those indebted to the bank.[50]

Same.

§ 109. By-laws within the scope of the charter are as binding on the members of the corporation as the provisions of the charter itself.[51] So, where a certificate of stock recited that it was subject to the constitution and the by-laws, representations of an agent of the company in conflict therewith do not estop the corporation.[52] And a

49; Came v. Brigham (1854) 39 Me. 38; McFaddon v. County of Los Angeles (1888) 74 Cal. 571; Crittenden v. Southern Home B. & L. Ass'n (1900) 111 Ga. 266, 36 S. E. 643; Smith v. Pinney (1891) 86 Mich. 484, 49 N. W. 305; People's B., L. & S. Ass'n v. Tinsley (1898) 96 Va. 322, 31 S. E. 508; Paton v. Newman (1899) 51 La. Ann. 1428, 26 So. 576; Mandel v. Swan L. & C. Co. (1893) 51 Ill. App. 204; Beach v. Co-operative S. & L. Ass'n (1898) 10 S. D. 549, 74 N. W. 889.

[48] Palmetto Lodge v. Hubbell (1848) 2 Strob. (S. C.) 457, 49 Am. Dec. 604.

[49] Baur v. Samson Lodge (1885) 102 Ind. 267; Tuttle v. Walton (1846) 1 Ga. 49.

[50] Tete v. Farmers' & Mechanics' Bank (1869) 4 Brewst. (Pa.) 308.

[51] Jackson v. South Omaha Live Stock Exchange (1896) 49 Neb. 687, 68 N. W. 1051.

[52] Interstate B. & L. Ass'n v. Hunter (Tex. Civ. App.; 1899) 51 S. W. 520.

member induced to join by an erroneous publication of the by-laws is nevertheless limited to rights existing under actual by-laws.[53] But it has been held that a person joining an association may treat the by-laws as contained in a copy given him when he joins as the entire code of by-laws of the association, and is not bound by a by-law, of which he has no notice, not included in such copy.[54] Members of voluntary unincorporated associations are bound by the by-laws thereof, whether they are reasonable or not, so long as they are not illegal or contrary to public policy.[55] A member of a benefit society, who agrees to be bound by by-laws enacted by a supreme lodge, is not bound by by-laws enacted by a board of control.[56] And where the constitution of the local branch of a benefit society, forming part of the member's contract, contains no requirement that the by-laws of the subordinate societies must conform to those of the association, which has no direct transactions with members, the by-laws of the subordinate societies govern in case of conflict.[57] It has been held that, where the articles of association of a building and loan association contained in the pass-book of a member, to the terms of

[53] Hirsch v. United States Grand Lodge, O. of B. A. (1894) 56 Mo. App. 101.

[54] McKenney v. Diamond State Loan Ass'n (1889) 8 Houst. (Del.) 557, 18 Atl. 905.

[55] Conniff v. Jamour (1900) 31 Misc. Rep. 729, 65 N. Y. Supp. 317.

[56] Supreme Lodge, K. of P., v. Kutscher (1899) 179 Ill. 340, 53 N. E. 620; Supreme Lodge, K. of P., v. McLennan (1898) 171 Ill. 417, 49 N. E. 530.

[57] Polish R. C. Union v. Warczak (1899) 182 Ill. 27, 55 N. E. 64.

which he has assented, contain no provision for their amendment, amended articles subsequently adopted are not binding upon such member by force of their adoption alone.[58]

Same.

§ 110. A person who becomes insured in a mutual insurance company becomes a member of the company, and is bound by the by-laws of the company, and is chargeable with notice of them.[59]

A stockholder who has taken part in adopting by-laws, has acted and acquired rights under them, and has allowed third parties to acquire rights under them, is estopped from denying that the by-laws were legally adopted.[60] And a member of a mutual insurance company cannot question the validity of the by-laws under which he became a member, on the ground that they were not legally adopted.[61]

[58] Krakowski v. North New York B. & L. Ass'n (1894) 7 Misc. Rep. 188, 27 N. Y. Supp. 314.

[59] Pfister v. Gerwig (1890) 122 Ind. 567, 23 N. E. 1041; Treadway v. Hamilton Mut. Ins. Co. (1860) 29 Conn. 68; Susquehanna Ins. Co. v. Perrine (1844) 7 Watts & S. (Pa.) 348; Amesbury v. Bowditch Mut. Fire Ins. Co. (1856) 6 Gray (Mass.) 602; Simeral v. Dubuque Mut. Fire Ins. Co. (1865) 18 Iowa, 319; Coles v. Iowa State Mut. Ins. Co. (1865) 18 Iowa, 425; Mitchell v. Lycoming Mut. Ins. Co. (1865) 51 Pa. St. 402; Raggett v. Bishop (1826) 2 Car. & P. 343; Emmons v. Hope Lodge No. 21, I. O. O. F. (1893) 1 Marv. 187, 40 Atl. 956; Fitzgerald v. Metropolitan Acc. Ass'n (1898) 106 Iowa, 457, 76 N. W. 809; Willison v. Jewelers' & Tradesmen's Co. (1899) 61 N. Y. Supp. 1125.

[60] People v. Sterling B. C. Mfg. Co. (1876) 82 Ill. 461; Cheney v. Ketcham (1898) 7 Ohio Dec. 183, 5 Ohio N. P. 139. See Kent v. Quicksilver Mining Co. (1879) 78 N. Y. 179.

[61] Pfister v. Gerwig (1890) 122 Ind. 567, 23 N. E. 1041.

Every stockholder of a banking corporation who draws or indorses a note to procure a loan from the bank is bound to know the terms of the by-laws in regard to the right of the bank to a lien upon the stock to secure such debt.[62]

Waiver.

§ 111. Where a mutual benefit society issues a policy, the terms of which are in conflict with the by-laws of the society, the members' rights under the policy are measured by the policy itself, and not by the by-laws, since issuing the policy is a waiver of the by-laws.[63] Where the by-laws of an incorporated stock exchange define the rights and powers of its members, the members cannot assert any rights in the corporation in excess of those named in the by-laws.[64]

Estoppel to attack.

§ 112. A member cannot object to the enforcement of the by-laws against him on the ground that they were not properly adopted, where it appears that they have been

[62] Brent v. Bank of Washington (1836) 10 Pet. (U. S.) 614.

[63] Davidson v. Old People's Mut. Ben. Soc. (1888) 39 Minn. 303, 39 N. W. 803; Union Mut. Fire Ins. Co. v. Keyser (1855) 32 N. H. 313, 64 Am. Dec. 375; Campbell v. Merchants' & Farmers' M. & F. Ins. Co. (1858) 37 N. H. 41; McCoy v. Northwestern Mut. Relief Ass'n (1896) 92 Wis. 577; Sovereign Camp, Woodmen of the World, v. Fraley (Tex.; 1900) 59 S. W. 879. But see Steuve v. Grand Lodge, A. O. U. W. (1891) 5 Ohio Cir. Ct. Rep. 471; Williamson v. Eastern B. & L. Ass'n (1899) 54 S. C. 582, 32 S. E. 765; Welling v. Eastern B. & L. Ass'n (1899) 56 S. C. 280, 34 S. E. 409; International B. & L. Ass'n v. Abbott (1892) 85 Tex. 220, 20 S. W. 118.

[64] Belton v. Hatch (1888) 109 N. Y. 593.

recorded, acted upon, and enforced as the by-laws of the corporation.[65] But where by-laws are for any reason illegal, it will not be presumed that the stockholders have assented to them, and, even if they have expressly assented to them, they are not bound by such illegal by-laws.[66] Thus, a member cannot be deprived of his membership by an illegal by-law, even though he has assented to it;[67] nor is he bound by a by-law requiring the consent of all stockholders to a transfer of stock, even though he has assented to it.[68] Even though he fails to object to an illegal by-law until an attempt is made to enforce the same against him, he is not estopped from disputing its validity, and may enjoin the corporation from enforcing it, where it appears that he did not take any part in enacting the by-law, and that other persons have not been misled by his omission to protest against it.[69] And the fact that members of an association voluntarily assumed its obligation in the first instance does not make legal a by-law which, by fine or penalty, compels them to act in concert in withdrawing their

[65] State v. Curtis (1874) 9 Nev. 335.

[66] In re Klaus (1886) 67 Wis. 401; Thomas v. Musical Mut. Protective Union (1888) 17 N. Y. St. Rep. 51, 2 N. Y. Supp. 195, 49 Hun, 171; People v. St. Franciscus Ben. Soc. (1862) 24 How. Pr. (N. Y.) 221. Contra, Skelly v. Private Coachmen's Ben. Soc. (1884) 13 Daly (N. Y.) 2. See Great Falls M. F. Ins. Co. v. Harvey (1864) 45 N. H. 292, and Hibernia Fire Engine Co. v. Harrison (1880) 93 Pa. St. 269.

[67] People v. St. Franciscus Ben. Soc. (1862) 24 How. Pr. (N. Y.) 221; Thomas v. Musical Mut. Protective Union (1888) 17 N. Y. St. Rep. 51, 2 N. Y. Supp. 195, 49 Hun, 171.

[68] In re Klaus (1886) 67 Wis. 401.

[69] Kolff v. St. Paul Fuel Exchange (1892) 48 Minn. 215, 50 N. W. 1036.

patronage from those who are not members.[70] But one who borrows money from a corporation is estopped from setting up as a defense against payment that the loan was made in violation of the by-laws.[71] However, a member cannot complain of an illegal by-law which has not injured him.[72] A New York court has said that it knows "of no authority which permits one to bring an action to annul a by-law on the ground of its alleged invalidity. It is only where an attempt is made to enforce it to his detriment that he can question its validity. Neither can he invoke equitable relief unless there is reason to apprehend some irreparable injury."[73] Hence, a by-law enacted by the trustees of an association will not be set aside on the suit of a minority stockholder on the ground that certain of its provisions are in excess of the powers of the trustees, so long as the trustees act within their charter powers.[74] And the mere fact that a corporation has adopted an illegal by-law does not absolve its debtors from compliance with their contracts unaffected by the illegal by-law.[75] It has been held that a by-law void as to nonassenting members may be good as a contract by assenting members.[76]

[70] Boutwell v. Marr (1899) 71 Vt. 1, 43 L. R. A. 803.

[71] Reynolds v. Georgia State B. & L. Ass'n (1897) 102 Ga. 126, 29 S. E. 187.

[72] United States S. & L. Co. v. Shain (1898) 8 N. D. 136, 77 N. W. 1006.

[73] Burden v. Burden (1899) 159 N. Y. 287, 54 N. E. 17, affirming 8 App. Div. 160.

[74] Burden v. Burden (1896) 8 App. Div. 160.

[75] Orangeville Mut. S. F. & L. Ass'n v. Young (1880) 9 Wkly. Notes Cas. 251.

[76] Skelly v. Private Coachmen's B. & C. Soc. (1884) 13 Daly (N. Y.) 2, and cases cited.

Same.

§ 113. It has been held, however, in Louisiana, that a stockholder who had accepted an offer for stock on which was printed a by-law declaring stock forfeitable for nonpayment of an assessment was bound by such by-law as a member of the association, although he was not present at the meeting at which the by-law was adopted, and although the corporation had no power to pass such a by-law.[77] It has been held in Massachusetts that one who, in order to become a member of a corporation, signed a by-law which pledged the members to be liable "in their individual as well as their collective capacities" for all money lent to the corporation, was not thereby rendered personally liable to the lender for money subsequently lent to the corporation, where there was no evidence that the money was advanced on the credit of the by-law, except the fact that the preamble of the by-law set forth that the design of the corporation was to afford to persons desirous of saving their money the means of employing it to advantage.[78]

Effect of violation.

§ 114. Although a transfer of stock not in accordance with the by-laws may be efficacious to pass at least the equitable title,[79] the transferee has no right to compel the corporation to issue to him a new certificate until he has com-

[77] Lesseps v. Architects' Co. (1849) 4 La. Ann. 316.

[78] Flint v. Pierce (1868) 99 Mass. 68.

[79] Sargent v. Essex Marine Ry. Co. (1829) 9 Pick. (Mass.) 201; Sargent v. Franklin Ins. Co. (1829) 8 Pick. (Mass.) 90; Moore v. Bank of Commerce (1873) 52 Mo. 379; Wilson v. St. Louis & S. F. Ry. Co. (1891) 108 Mo. 588, 18 S. W. 286.

plied fully with the provisions of the by-laws upon that subject.[80] And where the charter of a mutual benefit society declares that beneficiaries may be changed in the manner provided by the by-laws, a change made in a manner not authorized by the by-laws is invalid.[81] Rights acquired by a stockholder before he purchases stock, and without notice of the by-laws, are not affected by his constructive notice of the by-laws created by his subsequent purchase of stock. Thus, a person who has contracted with a corporation for the purchase of its land, which contract is not executed in the manner provided by the by-laws, may assert in equity rights conferred on him by his contract, even though he becomes a member of the corporation before the time when he is entitled under the contract to receive a deed for the property.[82]

Same.

§ 115. Under by-laws of an incorporated society formed for other than business purposes, a person who has not been admitted a member in the manner prescribed by the by-laws cannot assert rights of membership.[83] Where a policy of insurance issued by a mutual fire insurance company provides that due notice of loss shall be given, but does not specify the manner of giving the notice, and makes no reference to the by-laws of the company, the member

[80] Bishop v. Globe Co. (1883) 135 Mass. 132; State v. New Orleans & C. R. Co. (1878) 30 La. Ann., Pt. I, 308.

[81] Head v. Supreme Council, C. K. (1895) 64 Mo. App. 212.

[82] Wait v. Smith (1879) 92 Ill. 385.

[83] Gray v. Christian Society (1884) 137 Mass. 331.

need not give notice in the form prescribed by the by-laws in order to acquire a right to the insurance money.[84] Under a by-law which provides that a member who has been suspended may be reinstated provided he pays all assessments, a suspended member who pays such assessments immediately becomes restored to the rights of membership, without any action by the society itself.[85] Where the by-laws of a mutual benefit society provide that any member disabled by sickness shall, on application, receive a certain weekly payment until he recovers or dies, a member is not entitled to draw such payments for any period previous to his making application therefor.[86] Where a mutual benefit society fails to pay a member the benefits to which he is entitled under its by-laws, he has a right to sue the society therefor,[87] and a by-law giving him the right to appeal from a subordinate to a higher tribunal of the society does not deprive him of the right to bring such suit.[88] In a case where it appeared that a railroad corporation, at its organization, adopted a by-law providing that its net earnings should be divided semi-annually among its stockholders, first paying a certain percentage upon its preferred stock, and afterwards dividing the remainder between the holders of its preferred and common

[84] Kingsley v. New England M. F. Ins. Co. (1851) 8 Cush. (Mass.) 402.

[85] Manson v. Grand Lodge (1883) 30 Minn. 509.

[86] Breneman v. Franklin Beneficial Ass'n (1842) 3 Watts & S. (Pa.) 218.

[87] Dolan v. Court of Good Samaritan (1880) 128 Mass. 437.

[88] Baur v. Samson Lodge (1885) 102 Ind. 270; Supreme Council v. Garrigus (1885) 104 Ind. 133.

stock, it was held that the subscribers for the preferred stock took their shares upon the conditions named in the by-laws as the contract between themselves and the corporation.[89]

Conduct of meetings.

§ 116. Where a corporation has, by its by-laws, adopted the rules of Cushing's Manual for the government of all debates of its members, a member cannot be punished for any offense given to the society during a debate, unless such offense is punishable according to the rules of Cushing's Manual.[90]

Transfer of stock.

§ 117. The neglect of a corporation to enact any by-law in reference to the transfer of stock, where the statute declares that stock "shall be transferred only on the books of the corporation in such manner as the by-laws may prescribe," does not relieve a stockholder from liability upon stock which he has sold without having it transferred on the books of the company, according to the usage of the company, since, as to a stockholder, the common usage of the corporation supplies the place of such a by-law.[91] Where the constitution and by-laws prescribe the manner in which the treasurer may be called upon to surrender his books for examination, he cannot be required, by a majority vote of the members, to submit his books in a differ-

[89] Belfast & W. L. R. Co. v. City of Belfast (1885) 77 Me. 445.
[90] People v. American Institute (1873) 44 How. Pr. (N. Y.) 468.
[91] Plumb v. Bank of Enterprise (1892) 48 Kan. 484, 29 Pac. 699.

ent manner.[92] Nor can a fraternal organization, by by-law, make the local branch the agents of a member in his negotiation for insurance.[93] A by-law of a building and loan association which allows members, on notice, to surrender their stock, and take the withdrawal value in cash, has the effect of transforming a member who has given such notice from a stockholder into a creditor of the association.[94]

Changes in by-laws.

§ 118. A subject of much importance to members of mutual insurance and of building and loan associations is the effect upon them of subsequent alterations of the by-laws. In recent years, this question has been a fertile source of litigation, and the decisions are in irreconcilable conflict. The following summary of the various alterations which have been construed by the courts will show the wide variation of judicial opinion on this subject.

Same—Changes held valid.

§ 119. The following alterations of the by-laws have been held to be binding upon members, although made after the issue of their certificates: Reducing benefits or payments;[95] increasing assessments;[96] regulating the or-

[92] Connell v. Stalker (1897) 21 Misc. Rep. 609, 48 N. Y. Supp. 77.

[93] McMahon v. Supreme Tent, K. of M. (1899) 151 Mo. 522, 52 S. W. 384.

[94] McNab v. Southern Mut. B. & L. Ass'n (1897) 50 S. C. 89, 27 S. E. 543.

[95] Pain v. Societe St. Jean Baptiste (1899) 172 Mass. 319, 52 N. E. 502; Fugure v. Mutual Society of St. Joseph (1874) 46 Vt. 362; Su-

der of payment;[97] changing the conditions upon which loans are made;[98] changing the rules regulating redemption;[99] limiting withdrawing members to a certain proportion of the receipts;[100] forfeiting the policy in case of suicide;[101] forfeiting the policy in case the insured engages in the saloon business or liquor trade;[102] restricting the

preme Lodge, K. of P., v. Knight (1889) 117 Ind. 489, 20 N. E. 479; Bowie v. Grand Lodge, K. of W. (1893) 99 Cal. 392, 34 Pac. 103; McCabe v. Father Matthew T. A. B. Soc. (1881) 24 Hun (N. Y.) 149; Poultney v. Bachman (1883) 31 Hun (N. Y.) 49; Duer v. Supreme Council, O. of C. F. (1899) 21 Tex. Civ. App. 493, 52 S. W. 109.

[96] Fullenwider v. Supreme Council of R. L. (1899) 180 Ill. 621, 54 N. E. 485; Pioneer S. & L. Co. v. Brockett (1895) 58 Ill. App. 204; Pioneer S. & L. Co. v. Miller (1895) 58 Ill. App. 211.

[97] Engelhardt v. Fifth Ward P. D. S. & L. Ass'n (1896) 148 N. Y. 281, 42 N. E. 710; Pepe v. City & S. P. Bldg. Soc. [1893] 2 Ch. 311; Eastern B. & L. Ass'n v. Snyder (1900) 98 Va. 710, 37 S. E. 298.

[98] Maynard v. Interstate B. & L. Ass'n (1900) 112 Ga. 443, 37 S. E. 741.

[99] Wilson v. Miles Platting Bldg. Soc. (1887) 22 Q. B. Div. 381; Rosenberg v. Northumberland Bldg. Soc. (1889) 22 Q. B. Div. 373; Bradbury v. Wild [1893] 1 Ch. 377.

[100] House v. Eastern B. & L. Ass'n (1900) 52 App. Div. 163, 66 N. Y. Supp. 109; Pawlick v. Homestead Loan Ass'n (1896) 15 Misc. Rep. 427, 37 N. Y. Supp. 164; Bearden v. People's B., L. & S. Ass'n (Tenn. Ch. App.; 1898) 49 S. W. 64; Stilwell v. People's B., L. & S. Ass'n (1899) 19 Utah, 257, 57 Pac. 14.

[101] Supreme Commandery v. Ainsworth (1882) 71 Ala. 449; Supreme Lodge, K. of P., v. Kutscher (1899) 179 Ill. 340, 53 N. E. 620; Hughes v. Wisconsin Odd Fellows' Mut. Life Ins. Co. (1898) 98 Wis. 292; Supreme Lodge, K. of P., v. La Malta (1895) 95 Tenn. 157, 31 S. W. 493; Daughtry v. Knights of Pythias (1896) 48 La. Ann. 1203, 20 So. 712; Supreme Tent, K. of M., v. Hammers (1899) 81 Ill. App. 560 (extending the period within which suicide nullifies the policy).

[102] Moerschbaecher v. Supreme Council of R. L. (1900) 188 Ill. 9;

designation of beneficiaries;[103] changing the method of determining beneficiaries;[104] forfeiting benefits for breach of newly-imposed conditions;[105] referring disputes to arbitration;[106] requiring the submission of claims to the association;[107] providing for periodical readjustment of insurance;[108] imposing certain formalities and payments as conditions of membership;[109] transferring the power to select a railway route from the stockholders to the directors;[110] forfeiting membership for joining certain organizations;[111] repealing provision for payment of loans before

Ellerbe v. Faust (1894) 119 Mo. 653, 25 S. W. 390; State v. Grand Lodge, A. O. U. W. (1897) 70 Mo. App. 456; People v. Grand Lodge, A. O. U. W. (1900) 32 Misc. Rep. 528, 67 N. Y. Supp. 330; Loeffler v. Modern Woodmen (1898) 100 Wis. 79, 75 N. W. 1012; Schmidt v. Supreme Tent, K. of M. (1897) 97 Wis. 528, 73 N. W. 22.

[103] Baldwin v. Begley (1900) 185 Ill. 180, 56 N. E. 1065; Roberts v. Grand Lodge, A. O. U. W. (1901) 33 Misc. Rep. 536, 68 N. Y. Supp. 949; Hysinger v. Supreme Lodge, K. & L. of H. (1890) 42 Mo. App. 627.

[104] Masonic Mut. Ben. Ass'n v. Severson (1899) 71 Conn. 719, 43 Atl. 192; Supreme Council, A. L. of H., v. Adams (1895) 68 N. H. 236, 44 Atl. 380.

[105] Smith v. Galloway [1898] 1 Q. B. Div. 71; MacDowell v. Ackley (1880) 93 Pa. St. 277; Borgards v. Farmers' Mut. Ins. Co. (1890) 79 Mich. 440, 44 N. W. 856.

[106] Mackenzie v. Everton & W. D. Permanent Ben. Bldg. Soc. (1890) 61 Law T. (N. S.) 680.

[107] Robinson v. Templar Lodge, No. 17, I. O. O. F. (1897) 117 Cal. 370, 49 Pac. 170.

[108] Korn v. Mutual Assur. Soc. (1810) 6 Cranch (U. S.) 192.

[109] Taylor v. Edson (1849) 58 Mass. 522.

[110] East Tennessee & V. R. Co. v. Gammon (1858) 5 Sneed (Tenn.) 567.

[111] Lawson v. Hewell (1897) 118 Cal. 613, 50 Pac. 763.

maturity;[112] and repealing provision for repayment of the amount paid in, in case of forfeiture.[113]

Same—Changes held invalid.

§ 120. On the other hand, the following alterations of the by-laws have been held to be inoperative as to members whose certificates were issued before the alteration: Reducing benefits;[114] limiting benefits or profits to certain funds;[115] increasing dues;[116] restricting the designation of beneficiaries;[117] changing widow's benefit after husband's death;[118] forfeiting policy in case of suicide;[119] changing

[112] Interstate B. & L. Ass'n v. Hafter (1899) 76 Miss. 770, 24 So. 87.

[113] Schrick v. St. Louis Mut. House Bldg. Co. (1864) 34 Mo. 423.

[114] Knights Templars' & M. Life Ind. Co. v. Jarman (1900) 44 C. C. A. 93, 104 Fed. 638; Stohr v. San Francisco M. F. Soc. (1890) 82 Cal. 557, 22 Pac. 1125; Hale v. Equitable Aid Union (1895) 168 Pa. St. 377, 31 Atl. 1066; Becker v. Berlin Ben. Soc. (1891) 144 Pa. St. 232, 22 Atl. 699; Grafstrom v. Frost Council, No. 21, O. of C. F. (1897) 19 Misc. Rep. 180, 43 N. Y. Supp. 266; Pellazzino v. German Catholic St. J. Soc. (1886) 16 Wkly. Law Bul. (Ohio) 27. And see opinion of the attorney general of Illinois in Re National Home B. & L. Ass'n, 11 Nat. Corp. Rep. 459.

[115] St. Patrick's Male Beneficial Soc. v. McVey (1880) 92 Pa. St. 510; Pokrefky v. Detroit Firemen's Fund Ass'n (1899) 121 Mich. 456, 80 N. W. 240; Sinteff v. People's B., L. & S. Ass'n (1899) 37 App. Div. 340, 57 N. Y. Supp. 611; Interstate B. & L. Ass'n v. Ouzts (1899) 54 S. C. 214, 32 S. E. 303.

[116] Hibernia Fire Engine Co. v. Commonwealth (1880) 93 Pa. St. 268.

[117] Spencer v. Grand Lodge, A. O. U. W. (1897) 22 Misc. Rep. 147, 48 N. Y. Supp. 590, affirmed, without opinion, 53 App. Div. 627, 65 N. Y. Supp. 1146; Swain v. Grand Lodge, A. O. U. W. (1899) 22 Pa. Co. Ct. Rep. 548, 8 Pa. Dist. Rep. 407; Wist v. Grand Lodge, A. O. U. W. (1892) 22 Or. 271, 29 Pac. 610; Folmer's Appeal (1878) 87 Pa. St. 133.

[118] Gundlach v. Germania Mechanics' Ass'n (1875) 4 Hun (N. Y.) 339.

conditions of withdrawal;[120] giving the corporation additional time to pay losses;[121] postponing benefits as a penalty for arrears;[122] forfeiting policy for nonpayment of assessments;[123] forfeiting policy for arrears of certain duration;[124] discontinuing assessment of nonborrowing members, and changing the maturity of the debts of borrowing members;[125] imposing conditions on reinstatement of delinquents;[126] forfeiting policy for breach of newly-imposed condition;[127] providing for submission of claims to the association;[128] changing from mutual to old-line insurance basis;[129] arbitrarily placing all members who join in a certain year in a class by themselves, and advancing their ages each year as assessments are made, while all other

[119] Northwestern B. & M. Aid Ass'n v. Wanner (1887) 24 Ill. App. 358; Smith v. Supreme Lodge, K. of P. (1900) 83 Mo. App. 512.

[120] Savage v. People's B., L. & S. Ass'n (1898) 45 W. Va. 275, 31 S. E. 991.

[121] Morrison v. Wisconsin Odd Fellows' Mut. Life Ins. Co. (1884) 59 Wis. 162; Wheeler v. Supreme S. O. of I. N. (1896) 110 Mich. 437, 68 N. W. 229.

[122] Coyle v. Father Matthew T. A. B. Soc. (1883) 17 Wkly. Dig. (N. Y.) 17.

[123] McNeil v. Southern Tier M. R. Ass'n (1899) 40 App. Div. 581, 58 N. Y. Supp. 119.

[124] Fire Ins. Co. v. Connor (1851) 17 Pa. St. 136.

[125] International B. & L. Ass'n v. Braden (Tex. Civ. App.; 1895) 32 S. W. 704.

[126] Sieverts v. National Benev. Ass'n (1895) 95 Iowa, 710, 64 N. W. 671.

[127] Becker v. Farmers' Mut. Fire Ins. Co. (1882) 48 Mich. 610.

[128] Brotherhood of Railroad Trainmen v. Newton (1898) 79 Ill. App. 500.

[129] Covenant Mut. Life Ass'n v. Kentner (1900) 188 Ill. 431.

members joining thereafter are assessed as of the age of entry;[130] arbitrarily retiring part of the stock;[131] giving preference to certain shares of stock;[132] making a member's application part of his contract;[133] providing for the publication of notice of assessments in another state, and authorizing forfeiture without actual notice;[134] imposing conditions as to residence upon the holder of a scholarship;[135] repealing a provision establishing a withdrawal value of shares;[136] repealing a provision for withdrawal upon notice, and for repayment of the amount actually paid in;[137] and repealing a provision for benefit for total disability resulting from paralysis.[138]

Same—By-laws as part of member's contract.

§ 121. The conflict of opinion extends to the constituent elements of the contract of membership. It is generally held, however, that the by-laws enter into and form

[130] Ebert v. Mutual R. F. Life Ass'n (1900) 81 Minn. 116, 83 N. W. 506; Strauss v. Mutual R. F. Life Ass'n (1900) 126 N. C. 971, 36 S. E. 352.

[131] Bergman v. St. Paul Mut. Bldg. Ass'n (1882) 29 Minn. 275.

[132] Kent v. Quicksilver Mining Co. (1879) 78 N. Y. 182.

[133] Grand Lodge, A. O. U. W., v. State (1891) 44 Mo. App. 445.

[134] Thibert v. Supreme Lodge, K. of H. (1899) 78 Minn. 448, 81 N. W. 220.

[135] Illinois Conference v. Female College (1860) 25 Ill. 148.

[136] Louisville German B. & L. Ass'n v. Wissing (1882) 4 Ky. Law Rep. 443.

[137] Holyoke B. & L. Ass'n v. Lewis (1891) 1 Colo. App. 127, 27 Pac. 872.

[138] Starling v. Supreme Council, R. T. of T. (1896) 108 Mich. 440.

part of a member's contract,[139] whether referred to in his certificate of membership or not.[140] Of course the by-laws may be expressly excluded, as where certificates of membership expressly provide that the application for membership and the certificate "shall constitute the complete and only contract" between members and the association.[141] But, assuming that the by-laws become part of the contract of membership, the decisions are in conflict as to what by-laws thus enter into the contract. Some courts hold that only the by-laws in existence when his certificate

[139] Supreme Lodge, K. of P., v. Knight (1889) 117 Ind. 489, 20 N. E. 479; Sabin v. Senate of National Union (1892) 90 Mich. 177, 51 N. W. 202; Van Poucke v. Netherland St. V. de P. Soc. (1886) 63 Mich. 378, 29 N. W. 863; Wist v. Grand Lodge, A. O. U. W. (1892) 22 Or. 271, 29 Pac. 610; Ebert v. Mutual R. F. Life Ass'n (1900) 81 Minn. 116, 83 N. W. 506; Newton v. Northern Mut. Relief Ass'n (1899) 21 R. I. 476, 44 Atl. 690; Supreme Council of R. A. v. Brashears (1899) 89 Md. 624, 43 Atl. 866; Conway v. Supreme Council C. K. of A. (1901) 131 Cal. 437, 63 Pac. 727; Clark v. Lehman (1896) 65 Ill. App. 238; Strauss v. Mutual R. F. Life Ass'n (1900) 126 N. C. 971, 36 S. E. 352; French v. Society Select Guardians (1898) 23 Misc. Rep. 86, 51 N. Y. Supp. 675; Becker v. Farmers' Mut. Fire Ins. Co. (1882) 48 Mich. 610; Stilwell v. People's B., L. & S. Ass'n (1899) 19 Utah, 257, 57 Pac. 14; Drum v. Benton (1898) 13 App. D. C. 245; Lake v. Minnesota Masonic Relief Ass'n (1895) 61 Minn. 96, 63 N. W. 261.

[140] Supreme Commandery v. Ainsworth (1882) 71 Ala. 449; Haas v. Mutual Relief Ass'n (1897) 118 Cal. 6, 49 Pac. 1056; Clark v. Mutual R. F. Life Ass'n (1899) 14 App. D. C. 154; Moss v. Littleton (1895) 6 App. D. C. 201; Condon v. Mutual R. F. Life Ass'n (1899) 89 Md. 99, 42 Atl. 944; May v. New York Safety R. F. Soc. (1888) 14 Daly (N. Y.) 389. Contra, Given v. Rettew (1894) 162 Pa. St. 638, 29 Atl. 703. And see Parish v. Bankers' Life Ass'n (Ill.; 1897) 14 Nat. Corp. Rep. 182.

[141] Covenant Mut. Life Ass'n v. Tuttle (1900) 87 Ill. App. 309.

issued are binding upon a member, in the absence of express provision as to future by-laws.[142]

Same—Reservation of right to amend.

§ 122. But where the power to amend is reserved in the by-laws, it has been held that a member is charged with notice of this, as well as any other, by-law.[143] A member cannot single out one by-law, and claim that to be absolute. The by-laws must be taken as a whole, and a by-law giving the right to amend or repeal is as much a part of his contract as the by-law under which he claims his right to benefits.[144] Indeed, some courts take the position that, since the power to alter the by-laws is inherent, it need not be expressed,[145] and that a member is bound by subsequent alterations unless the power of alteration is expressly limited by the rules.[146] On the other hand, it has been held that, where no provision for amendment is made, subsequent amendments are without

[142] Covenant Mut. Life Ass'n v. Kentner (1900) 188 Ill. 431; Covenant Mut. Life Ass'n v. Tuttle (1900) 87 Ill App. 309; Northwestern B. & M. Aid Ass'n v. Wanner (1887) 24 Ill. App. 358; Pokrefky v. Detroit Firemen's Fund Ass'n (1899) 121 Mich. 456, 80 N. W. 240; Becker v. Farmers' Mut. Fire Ins. Co. (1882) 48 Mich. 610. See Siewerts v. National Benev. Ass'n (1895) 95 Iowa, 710, 64 N. W. 671, and Hughes v. Wisconsin Odd Fellows' Mut. Life Ins. Co. (1898) 98 Wis. 292.

[143] Wist v. Grand Lodge, A. O. U. W. (1892) 22 Or. 271, 29 Pac. 610.

[144] Poultney v. Bachman (1883) 31 Hun (N. Y.) 52.

[145] Supreme Lodge, K. of P., v. Knight (1889) 117 Ind. 489, 20 N. E. 479; Stohr v. San Francisco M. F. Soc. (1890) 82 Cal. 557, 22 Pac. 1125. And see Fullenwider v. Supreme Council of R. L. (1899) 180 Ill. 621, 54 N. E. 485; Covenant Mut. Life Ass'n v. Kentner (1900) 188 Ill. 431.

[146] Lawson v. Hewell (1897) 118 Cal. 613.

effect.[147] And the terms of the certificate or contract may be so absolute and unqualified as to place it beyond the power of alteration.[148]

It is customary, however, to refer to the by-laws in the certificate of membership, and to provide therein for the operation of subsequent enactments. The usual provision is that a member shall be bound by all by-laws then in force, or that may thereafter be enacted. Of course the power to make new by-laws necessarily includes the power to amend or repeal those theretofore made;[149] and an alteration is a *pro tanto* repeal.[150] The determination of the limit of alteration under such provisions has given rise to much difference of judicial opinion.

Same—Lawful and reasonable amendments only.

§ 123. In the first place, it may be said that all subsequent by-laws are subject to the same limitations as the original by-laws, *i. e.*, they must not conflict with the statutes of the state or the charter of the organization; they must be reasonable, and in conformity with the nature and objects of the organization.[151] The power to make

[147] Krakowski v. North New York B. & L. Ass'n (1894) 7 Misc. Rep. 188, 27 N. Y. Supp. 314.

[148] Sinteff v. People's B., L. & S. Ass'n (1899) 37 App. Div. 340, 57 N. Y. Supp. 611, and the construction put upon it in House v. Eastern B. & L. Ass'n (1900) 52 App. Div. 163, 66 N. Y. Supp. 109. And see the dictum in Stohr v. San Francisco M. F. Soc. (1890) 82 Cal. 557, 22 Pac. 1125.

[149] Fullenwider v. Supreme Council, R. L. (1899) 180 Ill. 621, 54 N. E. 485.

[150] Kent v. Quicksilver Mining Co. (1879) 78 N. Y. 159.

[151] Stilwell v. People's B., L. & S. Ass'n (1899) 19 Utah, 257, 57 Pac. 14; Korn v. Mutual Assur. Soc. (1810) 6 Cranch (U. S.) 192.

by-laws is a power to make such as are not inconsistent with the law, and the power to alter, which is merely the making of another by-law on the same subject, has the same limit. A Pennsylvania case affords a good illustration of this principle. A volunteer fire organization, which had ceased to run to fires in consequence of the creation of a paid fire department, converted its effects into cash, and leased its engine house. A few months afterwards, the by-laws were changed so as to increase the monthly dues from twelve and one-half cents to two dollars. "Its constitution," said the court, "declares the object of the corporation shall be the promotion of the public good by the extinguishing of fires, and the funds shall be appropriated to no other object than that for which it was provided. After the company had ceased to extinguish fires, had sold its engine and other personalty, and leased its house, what was the object in increasing the monthly dues of its members to sixteen times their former rates? It did not propose to prove any object, its minutes show none, and none is suggested. * * * With its business gone, its personal property converted into money, its real estate leased, with scarcely any legitimate expenses, and thousands of dollars in its treasury, the amendment to the by-laws increasing dues was most extraordinary and unreasonable."[152] Assent to future by-laws means only such as are reasonable.[153] Yet, even within these limits, there is room for much conflict of opinion.

[152] Hibernia Fire Engine Co. v. Commonwealth (1880) 93 Pa. St. 264.

[153] Thibert v. Supreme Lodge, K. of H. (1899) 78 Minn. 448, 81 N. W.

Same—Impairment of contract not allowed.

§ 124. One class of cases confines the operation of subsequent alterations within the narrowest possible limits. It is said that, while a member has no right to presume that no change will be made in the by-laws, he cannot be held to presume that his contract will be affected. "The fact that it reserved the right, by the assent of the member, to make future by-laws obligatory upon him, could not justly be deemed to comprehend the right to abate its debt, for that would *pro tanto* destroy the contract between the parties; and to permit one person to accept the consideration for a debt, and subsequently to deny a material part or all of such debt, would authorize a patent fraud, which the law does not deem to have been within the intent of a mere general agreement for changes in the contract. Such an agreement only contemplates those changes which fairly consist with the full obligation entered into. It does not imply that the obligation itself should be lessened or destroyed at the will or caprice of the obligor."[154] Hence it is held that subsequent by-laws will not be given retroactive effect unless their terms are imperative,[155] even

220; Smith v. Supreme Lodge, K. of P. (1900) 83 Mo. App. 512; Grafstrom v. Frost Council, No. 21 (1897) 19 Misc. Rep. 180, 43 N. Y. Supp. 266. And see Wist v. Grand Lodge, A. O. U. W. (1892) 22 Or. 271, 29 Pac. 610; Ebert v. Mutual R. F. Life Ass'n (1900) 81 Minn. 116, 83 N. W. 506. It is suggested in Thibert v. Supreme Lodge, supra, that a by-law may be reasonable as to members who join with notice of it, and unreasonable as to those who joined before its enactment.

[154] Smith v. Supreme Lodge, K. of P. (1900) 83 Mo. App. 512.

[155] Grafstrom v. Frost Council, No. 21 (1897) 19 Misc. Rep. 180, 43 N. Y. Supp. 266; Glover v. Lodge (1883) 2 Del. Co. Rep. 25; Wist v.

though both the member's application and certificate stipulate that his right to participate in benefits is conditioned on the by-laws.[156] The doctrine of this class of cases may be summarized in the language of the court in a recent case in New York as follows: "The true doctrine, we think, is that a by-law of such an association that would have the effect of materially changing or impairing the obligation of an existing contract cannot be given a retroactive effect. If it is attempted to give it such a retroactive effect, the by-law is unreasonable, especially in cases where, by the terms of the contract of insurance entered into by such a corporation, no right to amend its by-laws is expressly reserved."[157]

Same—Membership rights and insurance rights distinguished.

§ 125. Some of the cases taking this limited view of the operation of subsequent alterations of the by-laws make a distinction between a member's rights as a member and his rights under his contract of insurance. A member, it is said, occupies a dual relation to the company,—first, as one of its members, and, second, as any other individual having a contract with it. In the former relation, he is

Grand Lodge, A. O. U. W. (1892) 22 Or. 271, 29 Pac. 610; Northwestern B. & M. Aid Ass'n v. Wanner (1887) 24 Ill. App. 358; Covenant Mut. Life Ass'n v. Kentner (1900) 188 Ill. 431; Insurance Co. v. Connor (1851) 17 Pa. St. 136; Spencer v. Grand Lodge, A. O. U. W. (1897) 22 Misc. Rep. 147, 48 N. Y. Supp. 590; Gundlach v. Germania Mechanics' Ass'n (1875) 4 Hun (N. Y.) 339.

[156] A. O. U. W. v. Brown (1901) 112 Ga. 545, 37 S. E. 890.

[157] McNeil v. Southern Tier M. R. Ass'n (1899) 40 App. Div. 581, 58 N. Y. Supp. 119.

bound by any lawful amendment of the by-laws concerning the government of the corporation or the mode of transacting its business or in its rules of discipline.[158] But in his contract for insurance, a member acts for himself, and not as a part of the society; his rights rest upon his contract of insurance, not upon his contract of membership in the society.[159]

In an early case, the supreme court of Pennsylvania said: "A mutual insurance company differs from other insurance companies in this, that the person insured participates in the profits and losses. These rights and liabilities have respect to his corporate privileges, and a reasonable by-law regulating them might be free from objection. But in addition to his rights and duties as a corporator, [he] stands before us as a party to a covenant executed by himself on the one part, and by the insurance company under its corporate seal on the other. His rights under that covenant are as fully protected by law from the corporate action of the company as if he were a stranger. It affects not his rights under that contract that by virtue of it he becomes a member of the company, and as such subject to liabilities and entitled to privileges. This is an incident of the contract of insurance which may subject his corporate rights to the authority of the corporation; but his rights as a party insured stand entirely free from such control."[160]

[158] Knights Templars' & M. Life Ind. Co. v. Jarman (1900) 44 C. C. A. 93, 104 Fed. 638.

[159] Covenant Mut. Life Ass'n v. Tuttle (1900) 87 Ill. App. 309.

[160] Insurance Co. v. Connor (1851) 17 Pa. St. 136. See, also, North-

Same—Reservations upheld.

§ 126. On the other hand, another line of decisions hold that it is simply a question of the proper construction of a contract. Persons may well contract with reference to future by-laws; they may consent that such by-laws may enter into and form part of their contracts, modifying or varying them. It is their voluntary agreement which relieves the operation of such changes from all imputation of injustice. "The fundamental principle of such organizations is the mutuality of duty and equality of rights of the membership, without regard to the time of admission. This cannot well be preserved if the members stipulating for benefits were not required to consent that they would be subject to future as well as existing by-laws. Time and experience will develop a necessity for changes in the laws, and if the consent was not required, there would be a class of members bound by the changed laws, and a class exempt from their operation."[161] Where the alteration is regularly made, with the object of promoting the welfare of the organization, and the change operates equally upon all the members, no wrong is done any member. "It

western B. & M. Aid Ass'n v. Wanner (1887) 24 Ill. App. 358; Pellazzino v. German Catholic St. J. Soc. (1886) 16 Wkly. Law Bul. (Ohio) 27; Revere v. Boston Copper Co. (1834) 15 Pick. (Mass.) 363; Becker v. Farmers' Mut. Fire Ins. Co. (1882) 48 Mich. 610. In Pokrefky v. Detroit Firemen's Fund Ass'n (1899) 121 Mich. 456, 80 N. W. 240, it is suggested that the fact that the directors made the by-laws was a reason why a member should not be affected by a subsequent alteration.

[161] Supreme Commandery v. Ainsworth (1882) 71 Ala. 449.

may sometimes happen that the interests of an individual, or of a few individuals, may be impaired; but it is the right, and, indeed, the duty, of the society to protect the interests of the many, rather than of the few."[162]

Same—Slight changes.

§ 127. An effort has been made by some courts to place the limit of subsequent alteration at slight changes or mere regulations not affecting the substance of the contract. The theory of such cases is that, while it would not be reasonable to extend this power so as to authorize a change in the essential character of the original contract, yet a slight change more or less affecting the remedy of the member may well be binding.[163] But this theory presents no tangible distinction on principle. "The court would have, in each case, to examine the subject to which the alteration applied, and to say whether it was material or trifling, and so binding or not binding. That would be to embark on a difficult course; and where would the court draw the line?"[164] But the other extreme of this proposition, *i. e.*, the possibility of an entire deprivation of rights under the power to alter, is excluded by the language of

[162] Supreme Lodge, K. of P., v. Knight (1889) 117 Ind. 489, 20 N. E. 479.

[163] Engelhardt v. Fifth Ward P. D. S. & L. Ass'n (1896) 148 N. Y. 281, 42 N. E. 710; Bearden v. People's B., L. & S. Ass'n (Tenn. Ch. App.; 1898) 49 S. W. 64. And see Northwestern B. & M. Aid Ass'n v. Wanner (1887) 24 Ill. App. 358.

[164] Pepe v. City & Suburban P. B. Soc. [1893] 2 Ch. 311.

many of the cases.[165] A recent case in Oregon is in point. There a subsequent by-law limited the designation of beneficiaries of the fund due upon a member's death to members of the family, blood relations, or persons dependent upon the member. The court held that the by-law was not binding upon a member who had no family, blood relations, or persons dependent upon him.[166]

Same—Vested rights.

§ 128. Finally, many of the cases draw the line at the impairment of vested rights. It is said that the power to alter the by-laws resides in the corporation for the purpose of carrying out the objects for which it was formed, and that a member's contract of insurance may be modified or varied by subsequent by-laws, either through the reserved power in the corporation to enact such by-laws, or by his contract with reference to future enactments; but this will not be construed as intending to reserve the power to impair vested rights.[167] The right to modify a contract,

[165] Supreme Lodge, K. of P., v. Knight (1889) 117 Ind. 489, 20 N. E. 479; Supreme Commandery v. Ainsworth (1882) 71 Ala. 445.

[166] Wist v. Grand Lodge, A. O. U. W. (1892) 22 Or. 271, 29 Pac. 610. See, also, Louisville German B. & L. Ass'n v. Wissing (1882) 4 Ky. Law Rep. 443, where it was held the repeal of a provision for withdrawal and fixing the withdrawal value of shares was void so far as it attempted to release the association from its obligation to purchase the stock of withdrawing members.

[167] Becker v. Berlin Ben. Soc. (1891) 144 Pa. St. 232, 22 Atl. 699; Pellazzino v. German Catholic St. J. Soc. (1886) 16 Wkly. Law Bul. (Ohio) 27; Holyoke B. & L. Ass'n v. Lewis (1891) 1 Colo. App. 127, 27 Pac. 872; Kent v. Quicksilver Mining Co. (1879) 78 N. Y. 159; Savage v. People's B., L. & S. Ass'n (1898) 45 W. Va. 275, 31 S. E. 991; Enter-

it is said, does not include the right to repudiate a debt, any more than the reserved right of the legislature to repeal the charter of a corporation gives the right to confiscate its property.[168] But it has been objected that this does not settle the question, for such vested rights as exist are subject to the still-existing power to alter the by-laws; so that the proposition assumes this form, that there is a vested right liable to be divested by any later by-law duly enacted.[169] And in a late English case the court said, in answer to the argument that the power of alteration was limited to such changes as would not interfere with vested rights, that there was no ground for introducing any such limitation into the contract. "Where the only contract between the society and the member is the original contract under which he became a member," said the court, "and that, as is the case here, provides for alterations of the rules, he is bound by any subsequent alteration that may be made within the power of alteration, whatever the extent of that alteration may be."[170]

prise B. & L. Soc. v. Bolin (1898) 12 Colo. App. 304, 55 Pac. 740; Coyle v. Father Matthew T. A. B. Soc. (1883) 17 Wkly. Dig. (N. Y.) 17; Grafstrom v. Frost Council, No. 21 (1897) 19 Misc. Rep. 180, 43 N. Y. Supp. 266. And see, also, on vested rights in general, Becker v. Farmers' Mut. Fire Ins. Co. (1882) 48 Mich. 610; Hamilton Mut. Ins. Co. v. Hobart (1854) 2 Gray (Mass.) 543; Great Falls Mut. Fire Ins. Co. v. Harvey (1864) 45 N. H. 292.

168 Pellazzino v. German Catholic St. J. Soc. (1886) 16 Wkly. Law Bul. (Ohio) 27.

169 Pepe v. City & Suburban P. B. Soc. [1893] 2 Ch. 311.

170 Smith v. Galloway [1898] 1 Q. B. 71.

Same—What are vested rights.

§ 129. Nor are the authorities agreed as to what constitutes a vested right in this class of cases. Many of the cases above cited in support of the inviolability of vested rights are cases in which sick benefits were reduced while a member was ill and drawing his benefit. The member's right was held to have become vested by his illness, and was not thereafter subject to alteration. But in opposition to this view it has been pointed out that the term "vested right" is often loosely used. In a sense, every right is vested; for if a person has a right at all, it must vest in him. But if the by-laws as they existed when the members joined constituted a contract that he should be paid at a certain rate in case of illness, then that contract existed just as much before his illness as afterwards. Under the contract, nothing was due before the illness actually occurred,—benefits do not accrue for future illness. The right of a sick member to benefits for future illness is not different in its nature from the right of the well members to benefits for future illness. In one case, the members have a right to future payments in case they become sick; in the other, the sick member has a right to future payments in case he continues sick. And if there was no power to change the by-law in the one case, there was no power to change it in the other, which is equivalent to saying that there was no power to change it at all. In other words, if the by-laws formed an unconditional contract for the payment of a fixed benefit in case of illness, it had that character before a member became sick; and if it cannot be

changed after the illness, it follows that it cannot be changed before.[171] As the supreme court of Massachusetts has recently said, in such a case, the member "had agreed that these changes * * * should be binding upon him, not as a new contract, but as part of the old contract, and under its provisions. But the plaintiff contends that there is an implied limit to the power of amendment, that it cannot be made so as to deprive him of a vested right, and that his right to the benefit became fixed by his disability, and can never be changed during that disability. But how does the right become fixed? There is no such restriction contained in the words expressing the power of amendment. To thus restrict the power would be to divide the society into two classes. * * * There can be no right to future benefits vested in one member more than in another. The right of a sick member to future benefits, which became vested in the plaintiff at the time of the disability, is not a right to receive, so long as such disability continues, the future benefits provided by the by-law existing at the time the disability begins, but simply a right to receive them subject to such changes as may be made by the society. * * * Such a change is not a repudiation of, but, on the contrary, is in accord with, the terms of the contract."[172]

[171] Stohr v. San Francisco M. F. Soc. (1890) 82 Cal. 557, 22 Pac. 1125; Poultney v. Bachman (1883) 31 Hun (N. Y.) 49. And see Fugure v. Mutual Society of St. Joseph (1874) 46 Vt. 369; McCabe v. Father Matthew T. A. B. Soc. (1881) 24 Hun (N. Y.) 149; Gundlach v. Germania Mechanics' Ass'n (1875) 49 How. Pr. (N. Y.) 190.

[172] Pain v. Societe St. Jean Baptiste (1899) 172 Mass. 319, 52 N. E. 502.

Same—Same.

§ 130. What constitutes a real vested right, which it is beyond the power of alteration to impair, is illustrated by a recent case in the federal courts, in which it appeared that a subsequent by-law of a mutual insurance company reduced the amount recoverable on its policies in case the death of the insured should be caused or superinduced by the use of intoxicating liquors. It was held that the case turned upon the question whether the disease, which was admitted to have been superinduced by the use of intoxicating liquors, became seated in fatal and incurable form before or after the by-law took effect. The reserved right to enact future by-laws is well recognized, the court said, "as authorizing it to subject members to further requirements and conditions of future liability by reasonable enactments within the objects and for the general welfare of the association, and to apply the regulations to prior contracts, but to the extent only that the conditions thus imposed arise after the enactment. No authority vests in the association to repudiate obligations as insurer which have become vested under the contract; and the by-law which imposes a new condition, or exempts from liability for a cause of death previously within the insurance, cannot be made retroactive to impair or destroy liability for a pre-existing cause which arose under the contract."[173]

[173] Lloyd v. Supreme Lodge, K. of P. (1899) 38 C. C. A. 654, 98 Fed. 66. And see the dictum of the supreme court of Massachusetts in the Pain Case, 172 Mass. 319, 52 N. E. 502: "Of course no amendment could change the amount of any benefit which, under any by-law,

Same—Acquiescence and beneficial alterations.

§ 131. Since a member's relation to the organization is a contract relation, it follows that his rights are not affected by a subsequent statute which has not been adopted as a by-law.[174] A member may always submit to an amended by-law, and thereby be bound by it.[175] Of course a subsequent alteration may operate beneficially as well as adversely; hence a subsequent by-law increasing the amount payable upon a member's death applies to those who were members at the time of its passage, as well as to those subsequently becoming such.[176]

ON THIRD PERSONS.

Not binding on strangers.

§ 132. When we come to the question of the effect of the by-laws of a corporation upon strangers to the corporation, we find a subject of some difficulty, in regard to which there are conflicting views. The general principle that

has passed from a possible to that of a future benefit [and has become a debt]. The right becomes vested absolutely as the time expires for which the benefit is granted." Also the statement in Stohr v. San Francisco M. F. Soc. (1890) 82 Cal. 557, 22 Pac. 1125: "The cases where a specific sum becomes due upon the happening of a certain event, as upon death, are not like the present. In such cases, an alteration in the contract cannot be made after the fact, for that would be to make that not due which had already become due."

[174] Knights Templars' & M. L. Ind. Co. v. Jarman (1900) 44 C. C. A. 93, 104 Fed. 638; Baldwin v. Begley (1900) 185 Ill. 180, 56 N. E. 1065. But see Hysinger v. Supreme Lodge, K. & L. of H. (1890) 42 Mo. App. 627.

[175] Penachio v. Saati Society (1900) 67 N. Y. Supp. 140.

[176] Lavigneur v. L'Union Mutuelle (1900) 16 Rap. Jud. Que. C. S. 588.

corporation by-laws bind only those who have consented to them applies here as well as elsewhere, and it is upon this consent that the power of the by-laws to affect third persons is based. Sometimes this consent is evidenced by a written agreement, as in the case of a person taking out an insurance policy in a mutual company wherein he agrees to be bound by the by-laws of the company, and sometimes it is evidenced by signature to the by-laws, as in the case of a depositor in a savings bank who signs the by-laws printed in his pass-book. In such cases, the person assenting to the by-laws is of course bound by them by virtue of his express contract.[177]

Illustrations.

§ 133. Thus, a depositor in a savings bank who has subscribed to its by-laws is bound by a by-law providing that the bank will not be liable for losses caused by payment to one in possession of the depositor's pass-book, where the latter has not notified the bank that the book was lost or stolen.[178] But it has been held that such a by-law was not binding on a depositor who had no notice thereof.[179] Even in case of express consent, the person assenting is not, as a general rule, bound by by-laws afterwards passed, and of which he has no notice.[180]

Under a statute providing that by-laws must be posted

[177] Appleby v. Erie County Savings Bank (1875) 62 N. Y. 17.

[178] Sullivan v. Lewiston Inst. of Savings (1869) 56 Me. 507.

[179] Ackenhausen v. People's Savings Bank (1896) 110 Mich. 175, 68 N. W. 118.

[180] Kimins v. Boston Five Cent Savings Bank (1886) 141 Mass. 33.

in the corporation's principal place of business, a by-law creating a lien on the stock which has not been thus posted cannot affect the rights of a purchaser of stock who had no actual notice of it at the time of his purchase.[181] And a by-law made by a bridge corporation, under authority of statute, imposing a penalty for riding or driving over the bridge faster than a walk, is not binding on a person having no notice thereof, unless posted at each end of the bridge, as required by the statute.[182] One who is not a member of a corporation cannot object to its by-laws regulating eligibility to membership, and governing the conduct of members.[183]

Implied assent sufficient.

§ 134. Since by-laws cannot interfere with the rights and privileges of third persons without their consent,[184] it is always necessary to show assent of some kind in order to make them binding as to such third persons; but this consent need not necessarily be expressed. Where a person has voluntarily entered into some business transaction with a corporation, with actual notice of the by-laws of the corporation, he certainly impliedly agrees to be bound by such by-laws, since he knows that a corporation can only legally act in accordance with its by-laws. This principle,

181 Des Moines Nat. Bank v. Warren County Bank (1896) 97 Iowa, 204, 66 N. W. 154.

182 Worcester v. Essex Merrimac Bridge Corp. (1856) 73 Mass. 457.

183 American L. S. C. Co. v. Chicago L. S. Exchange (1892) 143 Ill. 210, 32 N. E. 274.

184 Gordon v. Muchler (1882) 34 La. Ann. 606.

however, would not apply where the transaction is such as to constitute a waiver of the by-law on the part of the corporation.[185] But where the person dealing with the corporation has no notice, either actual or constructive, of the terms of its by-laws, he is not bound by them.[186] And the mere fact that he is dealing with a corporation that possesses power to make by-laws does not operate as constructive notice to him of the terms of such by-laws, for if it did, the question whether or not he had notice of the by-laws would never arise.

Who is stranger.

§ 135. It has been held in New Jersey that a stranger, to whom a policy of fire insurance issued by a mutual company has been assigned, is considered as a third person, and not as a member of the company, and is therefore not chargeable with notice of the company's by-laws.[187] On the other hand, it has been held in Indiana that a beneficiary of a life insurance policy, issued by a mutual society, is chargeable with notice of the by-laws.[188] In a

[185] Samuel v. Holladay (1869) 1 Woolw. 400, Fed. Cas. No. 12,288, 1 Am. Corp. Cas. 139; Samuels v. Holliday (1868) McCahon (Kan.) 214; Martino v. Commerce Fire Ins. Co. (1881) 47 N. Y. Super. Ct. 520.

[186] In re Asiatic Banking Corp. (1869) L. R. 4 Ch. 252; Bank of Holly Springs v. Pinson (1880) 58 Miss. 436; Ward v. Johnson (1880) 95 Ill. 248, 6 Am. Corp. Cas. 462; Barnes v. Black Diamond Coal Co. (1898) 101 Tenn. 354, 47 S. W. 498; Arapahoe C. & L. Co. v. Stevens (1889) 13 Colo. 534, 540, 22 Pac. 825.

[187] Miller v. Hillsborough Mut. Fire Assur. Ass'n (1888) 44 N. J. Eq. 224, 14 Atl. 278.

[188] Gray v. Supreme Lodge, K. of H. (1889) 118 Ind. 293, 20 N. E. 833.

case in California it was held that a purchaser of stock was not chargeable with notice of a by-law making all transfers of stock subject to all debts and equities in favor of the corporation.[189] This was a case where the purchaser had no actual notice of the by-law, and never had tried to obtain any knowledge on the subject, though he might, by inquiry, have learned all about the by-law in question.

What is implied notice.

§ 136. The rule has been laid down by the supreme court of appeals of Virginia, that persons dealing with a corporation are affected with notice of the provisions of its by-laws,[190] but this statement seems to be a little too sweeping. A more carefully guarded statement of the rule governing such cases has been laid down in two cases,—one in Maine and the other in New York,—in which it is said that the by-laws of a corporation are binding on its members, and also on others acquainted with its methods of doing business;[191] that is to say, that persons dealing with the corporation are not presumed, from the mere fact of their having dealings with it, to know all about its by-laws, but if they know the general course of business pursued by the corporation, that would be sufficient to put

189 Anglo-Californian Bank v. Grangers' Bank (1883) 63 Cal. 359.

190 Davis v. Rockingham Inv. Co. (1892) 89 Va. 290, 15 S. E. 547; Bocock's Ex'r v. Alleghany C. & I. Co. (1887) 82 Va. 913; Haden v. Farmers' & Mechanics' Fire Ass'n (1885) 80 Va. 683.

191 Cummings v. Webster (1857) 43 Me. 197; Driscoll v. West Bradley & C. M. Co. (1874) 59 N. Y. 101. See, too, Metropole B. & T. Bath Co. v. Garden City Fan Co. (1894) 50 Ill. App. 681, 683.

them on inquiry as to whether or not such course of business was controlled by the by-laws. It has been held in England that a person employing a broker to sell shares on the stock exchange is bound to indemnify the latter for any liability he may incur under reasonable rules of the exchange.[192]

Limitations of power of officers.

§ 137. Litigation as to the effect of corporate by-laws upon third persons often arises in connection with by-laws that limit and define the powers of the corporate officers. All contracts made with the corporation must necessarily be made with its officers or agents, since that is the only way in which a corporation can transact business. And so the question arises whether a person who enters into a contract with an officer of the corporation, on behalf of the corporation, is bound at his peril to know the extent of that officer's authority as contained in the by-laws, and whether the corporation can escape a liability created by such transaction on the ground that the officer in entering into the agreement exceeded his authority.

The rule in New York.

§ 138. The courts of New York, in answering this question, in some of the earlier cases, laid down the doctrine that persons dealing with the officers of a corporation are chargeable with notice of their authority, and of the limitations and restrictions upon it contained in the by-laws.[193]

[192] Smith v. Reynolds (1892) 66 Law T. (N. S.) 808.

[193] Adriance v. Roome (1868) 52 Barb. (N. Y.) 411; Dabney v. Stevens

But later cases hold that a corporation cannot escape the effect of a contract made by its president, on the plea that the by-laws vested authority to make such contracts solely in another officer, where knowledge of the by-law is not brought home to the other party, and the act of the president was within the apparent scope of his authority, and for a purpose directly connected with the company's legitimate business;[194] and the fact that a note made by the president of a corporation was not signed by the treasurer in accordance with the by-laws is no defense in the hands of a *bona fide* holder, the corporation having received the benefit of the proceeds.[195] The prevailing doctrine was clearly stated by the New York court of appeals in a recent case as follows: "By-laws of business corporations are, as to third persons, private regulations binding as between the corporation and its members on third persons having knowledge of them, but of no force as limitations *per se*, as to third persons, of an authority which, except for the by-laws, would be construed as within the apparent scope of the agency."[196]

(1870) 2 Sweeney (N. Y.) 415; De Bost v. Albert Palmer Co. (1885) 1 How. Pr. (N. S.; N. Y.) 501. And see Bohm v. Loewer's G. B. Co. (1890) 9 N. Y. Supp. 514; Fifth Nat. Bank v. Navassa Phosphate Co. (1890) 119 N. Y. 256.

[194] Smith v. Martin Anti-Fire Car Heater Co. (1892) 19 N. Y. Supp. 285. See, also, Perry v. Council Bluffs City Waterworks Co. (1893) 67 Hun, 456, 22 N. Y. Supp. 151.

[195] National Spraker Bank v. George C. Treadwell Co. (1894) 80 Hun, 363, 30 N. Y. Supp. 77; Grant v. George C. Treadwell Co. (1894) 82 Hun, 591, 31 N. Y. Supp. 702.

[196] Rathbun v. Snow (1890) 123 N. Y. 343.

The rule in Massachusetts—Bona fide dealers not affected.

§ 139. In Massachusetts it is held that the enumeration in the by-laws of certain specified powers bestowed upon the officers does not, as regards third persons, prevent such officers from binding the corporation by acts which, though not within the enumerated powers, are within the authority which the titles of the officers usually imply.[197] So, under the Massachusetts rule, a person making a contract with the president of a corporation upon a subject in regard to which presidents of corporations ordinarily have power to contract for their corporations, may hold the corporation to such contract, although, according to the by-laws, he had no power to enter into a contract. This, of course, is upon the assumption that the person had no actual knowledge in regard to the by-laws upon that subject. And the same rule is in force in Colorado.[198]

The rule in Illinois—Same.

§ 140. In Illinois, also, the courts have consistently held that third persons dealing in good faith with the corporate officers in reliance upon their apparent power cannot be affected by the failure of the officers to observe the rules and regulations enacted for the internal management of the corporate affairs.[199] The reason given for this

[197] Fay v. Noble (1853) 12 Cush. (Mass.) 1; Emery v. Boston Marine Ins. Co. (1885) 138 Mass. 412.

[198] Arapahoe C. & L. Co. v. Stevens (1889) 13 Colo. 534, 540, 22 Pac. 825.

[199] Ashley Wire Co. v. Illinois Steel Co. (1896) 164 Ill. 149, 45 N. E. 410; Atwater v. American Exch. Nat. Bank (1893) 152 Ill. 605, 38 N.

doctrine is that the by-laws "are private and only accessible to the officers of the company." This was said in a case where a deed had been executed by the president of a railroad company in behalf of the company. The by-laws required that all deeds should be countersigned by the secretary, but the court held that the deed in question, although it was not so countersigned, was valid, since the charter did not require it to be countersigned by the secretary, and the purchaser was not required to know the provisions of the by-laws.[200] In a case in Missouri, a purchase by the officers of the corporation in excess of their powers as limited in the by-laws was held valid, the seller having no actual knowledge of the by-laws.[201]

Assignment of shares contrary to by-law.

§ 141. A pledgee of stock evidenced by a certificate on which is printed a by-law which prohibits transfers of stock while the owner is indebted to the corporation takes the

E. 1017; Trawick v. Peoria & Ft. C. St. Ry. Co. (1896) 68 Ill. App. 159; Metropole B. & T. Bath Co. v. Garden City Fan Co. (1894) 50 Ill. App. 683.

[200] Smith v. Smith (1872) 62 Ill. 496.

[201] Ten Broek v. Winn Boiler Compound Co. (1885) 20 Mo. App. 19. And see Peatman v. Centerville L. H. & P. Co. (1896) 100 Iowa, 245, 69 N. W. 541. It is possible that this rule may be binding upon corporations by virtue of estoppel. The corporation which has appointed officers whose titles, such as president, treasurer, and secretary, have well-defined meanings, might well be held to be estopped from denying that such officers really have the powers that their titles imply, so far as concerns third persons who have no knowledge of the powers of those officers except as indicated by their official titles.

stock subject to the by-law, since the recital of it on the certificate is ample notice to him.[202] And the statement on the stock certificate that transfers must be made in accordance with the by-laws is notice to the purchaser of stock of the provisions of the by-laws on that subject.[203] But a provision in the charter of a corporation authorizing the directors to make all needful by-laws concerning the mode and manner of transferring stock does not constitute constructive notice to purchasers of stock of the existence of a by-law which provides that no transfers of stock shall be made by any stockholder who is indebted to the corporation, where the certificates of stock merely state that they are transferable at the office of the corporation, in person or by attorney, and make no allusion to the by-laws.[204] An assignee of shares is not bound by a by-law passed without authority, to which his assignor assented, such assent being a personal contract with the assignor, and enforceable against him alone.[205] Nor is a provision requiring stock to be first offered to the directors before transfer good as a contractual restriction against an innocent purchaser without notice.[206]

Rights of creditors.

§ 142. Rights of creditors, either of the corporation

[202] State Savings Ass'n v. Nixon-Jones Printing Co. (1887) 25 Mo. App. 642.

[203] In re Bachman (1875) 12 Nat. Bank. Reg. 223, 2 Cent. Law J. 119.

[204] Bank of Holly Springs v. Pinson (1880) 58 Miss. 437.

[205] Ireland v. Globe Milling Co. (1898) 21 R. I. 9, 41 Atl. 258.

[206] Brinkerhoff-Farris T. & S. Co. v. Home Lumber Co. (1893) 118

itself or of the stockholders, cannot be injuriously affected by by-laws. Thus, no by-law passed after the death of an insolvent stockholder can affect the rights of his creditors to the stock owned by him at the time of his death, since their rights have become vested by law upon his death.[207] And a by-law which releases stockholders from part of their liability upon their stock would be invalid as against the creditors of the corporation where the corporation is insolvent.[208] The creditors of an insolvent corporation, in relying upon a by-law, are not bound by what the officers and directors of the corporation may have understood the by-law to mean.[209] A by-law of a bank which provides that notes discounted by the bank and not paid at maturity shall be charged against the account of the party liable on the note does not apply to the case of a depositor who has not assented to it.[210]

Rights of third persons under by-laws.

§ 143. A by-law made solely for the benefit of the corporation itself, such as one requiring periodical examinations of its affairs by its directors, does not confer any rights upon third persons, and such a by-law does not in any way affect their contracts with the corporation.[211]

Mo. 447, 24 S. W. 129. See McNulta v. Corn Belt Bank (1897) 164 Ill. 427, 45 N. E. 954.

207 Steamship Dock Co. v. Heron (1866) 52 Pa. St. 280.

208 Slee v. Bloom (1822) 19 Johns. (N. Y.) 477.

209 In re Bachman (1875) 12 Nat. Bank. Reg. 227, 2 Cent. Law J. 119.

210 Gordon v. Muchler (1882) 34 La. Ann. 606.

211 State v. Atherton (1867) 40 Mo. 209; Morris Canal & Banking Co. v. Van Vorst (1847) 21 N. J. Law, 100.

Where, however, an incorporated savings bank has passed a by-law requiring all orders for money to be witnessed, the payment of money upon forged orders not properly witnessed would give the depositor a right of action against the bank, since he has a right to rely on the published by-laws as to the mode in which money can be withdrawn.[212]

And a by-law of a bank that all payments made and received must be examined at the time does not prevent a party dealing with the bank from showing afterwards that there was a mistake in his account of deposits and receipts, since by-laws cannot defeat the just claims of third persons.[213] Where the by-laws of a bank prescribe that the treasurer shall notify principal and sureties personally or in writing of any dues unattended to, and require prompt payment of the same, failure to do so does not discharge the sureties on a note due the bank.[214]

Right to attack by-laws.

§ 144. A person whose rights in regard to the corporation are derived under its by-laws cannot claim rights inconsistent with the by-laws, on the theory that the by-laws are void.[215] But a third person who enters into a contract with a corporation, without knowledge of its by-laws, does not become bound by such by-laws, so far as that particular contract is concerned, by afterward becoming a member of

[212] People's Savings Bank v. Cupps (1879) 91 Pa. St. 315.

[213] Mechanics' & Farmers' Bank v. Smith (1821) 19 Johns. (N. Y.) 115; Gallatin v. Bradford (1808) 1 Bibb (Ky.) 209.

[214] New Hampshire Savings Bank v. Downing (1844) 16 N. H. 187.

[215] Rex v. College of Physicians (1771) 5 Burrows, 2761.

the corporation.[216] This was held in a case where a corporation had given a bond conditioned for the conveyance of land. The by-laws required an order from the board of directors to authorize the sale of land by the company, but the purchaser had no knowledge of this by-law. After the bond had been given, and before the time for receiving the deed had come, he became a member of the corporation. The court held that he was entitled to a deed, regardless of the restriction contained in the by-law.[217]

Beneficiary bound by by-law.

§ 145. Of course the beneficiaries named in a benefit certificate take under the by-laws;[218] and where a member has power to change beneficiaries, a beneficiary named acquires no vested interest in the benefit.[219] But it has been

[216] Wait v. Smith (1879) 92 Ill. 385.

[217] In regard to the distinction in this respect between the effect of the by-laws as against members and as against strangers, it must be remembered that each member of a corporation has a legal right to inspect all the corporate records, so that, if he is ignorant of the by-laws, it is willful ignorance on his part, since opportunities of obtaining information in regard to the by-laws are always open to him. But third persons, even though they have extensive dealings with the corporation, have no legal right to inspect any of the corporate records. Their knowledge of the by-laws must therefore be necessarily confined to what the corporation, through its officers, chooses to tell them.

[218] Cotter v. Grand Lodge, A. O. U. W. (1899) 23 Mont. 82, 57 Pac. 650; Supreme Tent, K. of M., v. Hammers (1899) 81 Ill. App. 560.

[219] Sabin v. Phinney (1892) 134 N. Y. 423, 31 N. E. 1087; Supreme Council, A. L. H., v. Adams (1895) 68 N. H. 236, 44 Atl. 380; Supreme Council, C. K. of A., v. Morrison (1889) 16 R. I. 468, 17 Atl. 57; Lane v. Lane (1897) 99 Tenn. 639, 42 S. W. 1058; Sofge v. Supreme Lodge,

held that by-laws limiting redress to the tribunals of the society, or requiring resort thereto as a condition precedent to an appeal to the courts, are not binding on beneficiaries who are not members.[220] Where a member has the right to substitute beneficiaries on surrendering the original certificate, equity will not allow a beneficiary who refuses to surrender the certificate to profit by his own wrong, but, as between the rival beneficiaries, will consider the rules complied with.[221]

Involuntary relation to corporation.

§ 146. In regard to the effect of by-laws upon third persons, it is possible that a distinction ought to be drawn between those who have voluntarily and those who have involuntarily entered into relations with the corporation. Thus, a person who of his own accord proceeds to do business with a corporation may reasonably be held to a stricter degree of accountability to its by-laws than a person who becomes connected with a company involuntarily; as, for example, a creditor of a stockholder who acquires rights in the stock by virtue of legal proceedings taken to collect his debt. In the former case the party went into the transaction without compulsion, and could, without loss, have refused to go into it if he had been unable to satisfy himself

K. of H. (1897) 98 Tenn. 446, 39 S. W. 853; Catholic Knights v. Kuhn (1892) 91 Tenn. 214, 18 S. W. 385.

220 Grimbley v. Harrold (1899) 125 Cal. 24, 57 Pac. 558; Dobson v. Hall (1892) 11 Pa. Co. Ct. Rep. 532; Strasser v. Staats (1891) 59 Hun, 143, 13 N. Y. Supp. 167.

221 Jory v. Supreme Council, A. L. of H. (1894) 105 Cal. 20, 38 Pac. 524.

in regard to the by-laws. In the latter case, the party was driven into a business relation with the corporation in order to collect a debt which, in its inception, had no connection with the corporation. It would seem just that in the latter class of cases the rule of constructive notice should be less freely applied than in the former, but the distinction, apparently, has not yet been drawn by the courts.

CHAPTER VI.

ENFORCEMENT OF BY-LAWS.

Right to provide penalty.

§ 147. The right of a corporation to pass by-laws binding its members necessarily implies the right to enforce in some way obedience to such by-laws. Accordingly it has been held that by-laws may provide for their enforcement by means of pecuniary penalties or corporate disabilities,[1] subject to the rule that the penalties must in all cases be proportionate to the offense.[2] The corporate disabilities usually inflicted are suspension or expulsion. Pecuniary penalties may be collected by deducting them from the dividends of the offending members,[3] or by suit in the name of the corporation or its officers.[4]

1 Palmetto Lodge v. Hubbell (1848) 2 Strob. (S. C.) 457, 49 Am. Dec. 604.

2 Cahill v. Kalamazoo Mut. Ins. Co. (1845) 2 Doug. (Mich.) 138, 43 Am. Dec. 462.

3 Child v. Hudson's Bay Co. (1723) 2 P. Wms. 208.

4 Graves v. Colby (1838) 9 Adol. & E. 356; Feltmakers v. Davis (1797)

Recovery of penalty.

§ 148. Where a penalty named in a by-law is made payable to the officers of the corporation for the time being, for the use of the company, a suit for such a penalty cannot be maintained by the officers who held office at the time the penalty was incurred, when such officers have gone out of office before the action is brought.[5] In an action of debt to recover a penalty, a declaration stating the penalty as being forfeited under and by virtue of a certain by-law of the company before that time duly made, without setting forth the charter empowering the company to make by-laws, the by-law made, and the breach of it, is demurrable.[6] Such a declaration must set out the by-law and count specially on it.[7] The reasonableness of by-laws imposing penalties has been already discussed.[8]

Double punishment.

§ 149. A member cannot be twice punished for the same offense; hence the refusal to pay a fine inflicted for a violation of a by-law does not authorize the infliction of an additional fine.[9] And where a by-law provides a punishment of fine or expulsion for its violation, a member who

1 Bos. & P. 98. In one New York case it is intimated that payment of fines is only voluntary. Thomas v. Musical Mut. Protective Union (1890) 121 N. Y. 45, 24 N. E. 24.

5 Graves v. Colby (1838) 9 Adol. & E. 356.

6 Feltmakers v. Davis (1797) 1 Bos. & P. 98.

7 Ottawa Union Bldg. Soc. v. Scott (1865) 24 Up. Can. Q. B. 341.

8 See ante, c. 3, §§ 80-86.

9 Pentz v. Citizens' Fire Ins. Co. (1871) 35 Md. 73.

has violated the by-law and been fined therefor and paid his fine cannot be expelled for the same offense.[10] But it has been held in Georgia that a by-law of a benevolent society which provided that members should be dropped unless they paid the fines imposed by the by-laws for delinquencies was valid.[11]

Self-executing by-laws.

§ 150. By-laws may be self-executing, or may require affirmative action on the part of the corporation or its officers to inflict a penalty or effect a forfeiture provided for by by-law. It may be said generally that, if the language of the by-law is peremptory, and provides for no further act or ceremony, it is self-executing;[12] otherwise not.[13] A by-law forbidding the transfer of stock by any stockholder who is indebted to the corporation, while it creates a lien

[10] People v. New York Benev. Soc. (1875) 3 Hun (N. Y.) 364.

[11] Hussey v. Gallagher (1878) 61 Ga. 92. See contra, Adley v. Reeves (1813) 2 Maule & S. 53.

[12] Card v. Carr (1856) 1 C. B. (N. S.) 197; Rood v. Railway P. & F. C. Mut. Ben. Ass'n (1887) 31 Fed. 64; Schmidt v. Supreme Tent, K. of M. (1897) 97 Wis. 532, 73 N. W. 22; Freckmann v. Supreme Council, R. A. (1897) 96 Wis. 133, 70 N. W. 1113; Lehman v. Clark (1898) 174 Ill. 279, 51 N. E. 222; Parker v. Bankers' Life Ass'n (1900) 86 Ill. App. 315; Railway P. & F. C. Mut. Aid & Ben. Ass'n v. Leonard (1899) 82 Ill. App. 214; McDonald v. Ross-Lewin (1883) 29 Hun (N. Y.) 87; Paster v. Nagelsmith (1900) 30 Misc. Rep. 791, 63 N. Y. Supp. 154; Rhule v. Diamond Colliery Accidental Fund (1900) 13 Pa. Super. Ct. 416; Borgraefe v. Supreme Lodge, K. & L. of H. (1886) 22 Mo. App. 127.

[13] Northwestern Traveling Men's Ass'n v. Schauss (1893) 148 Ill. 304, 35 N. E. 747; Independent Order of Foresters v. Haggerty (1899) 86 Ill. App. 31; Lime City B., L. & S. Ass'n v. Black (1893) 136 Ind. 544,

on the stock, does not give the corporation any power to sell the stock.[13a]

Interference by courts.

§ 151. Where property interests are involved, the courts will interfere to prevent injustice in enforcing by-laws;[14] but so long as the association acts within the powers vested in it, and in good faith pursues the methods prescribed by its by-laws, provided such by-laws are not in violation of statute, or of any inalienable right of the member, the determination of a corporation, like that of a judicial tribunal, is conclusive.[15] And in the case of merely

35 N. E. 829; Gray v. Christian Soc. (1884) 137 Mass. 329; American Council, No. 107, v. National Council, O. U. A. M. (1899) 63 N. J. Law, 52, 43 Atl. 2; La Marsh v. L'Union St. J. B. Soc. (1895) 68 N. H. 229, 38 Atl. 1045; Wheeler v. Lackawanna Coal Co. (1898) 5 Lack. Leg. N. 97; Murphy v. Independent Order S. & D. of J. (1900) 77 Miss. 830, 27 So. 624; Modern Woodmen of America v. Jameson (1892) 48 Kan. 718, 30 Pac. 460.

[13a] Tete v. Farmers' & Mechanics' Bank (1869) 4 Brewst. (Pa.) 308.

[14] Grand Lodge, K. of P., v. People (1895) 60 Ill. App. 550; Modern Woodmen of America v. Deters (1896) 65 Ill. App. 368; Kolff v. St. Paul Fuel Exchange (1892) 48 Minn. 215, 50 N. W. 1036.

[15] Otto v. Journeymen Tailors' P. & B. Union (1888) 75 Cal. 308; Bachmann v. New Yorker D. A. B. (1882) 64 How. Pr. (N. Y.) 442, 12 Abb. New Cas. 54; Neukirch v. Keppler (1900) 67 N. Y. Supp. 710; Austin v. Dutcher (1900) 67 N. Y. Supp. 819; Travers v. Abbey (1900) 104 Tenn. 665, 58 S. W. 247; Ash v. Methodist Church (1900) 27 Ont. App. 602; Society for Visitation of Sick v. Commonwealth (1866) 52 Pa. St. 125, 91 Am. Dec. 139; Grand Castle v. Bridgeton Castle (N. J.; 1898) 40 Atl. 849; Hoeffner v. Grand Lodge, G. O. H. (1890) 41 Mo. App. 359; Croak v. High Court, I. O. F. (1896) 162 Ill. 298, 44 N. E. 525; Spilman v. Supreme Council, H. C. (1892) 157 Mass. 128, 31 N. E. 776.

voluntary unincorporated associations, the general rule is that the courts will not interfere.[16]

Same—Corporate tribunals.

§ 152. The by-laws may lawfully provide a tribunal before which disputed claims and rights of membership must be tried.[17] And the determination of such tribunal upon disputed claims,[18] or upon expulsion of members,[19] may be made final and conclusive. But it has been held that by-laws providing for the final and conclusive determination of disputes between the association and its members cannot preclude recourse to the courts.[20] A member

[16] Richardson v. Fremantle (1871) 24 Law T. (N. S.) 81; Lambert v. Addison (1882) 46 Law T. (N. S.) 20; Lyttleton v. Blackburn (1876) 33 Law T. (N. S.) 641; Gardner v. Freemantle (1871) 19 Wkly. Rep. 256; People v. Board of Trade (1875) 80 Ill. 137; Ryan v. Lamson (Ill.; 1892) 4 Nat. Corp. Rep. 127; White v. Brownell (1868) 4 Abb. Pr. (N. S.; N. Y.) 162, 2 Daly, 329; Bauer's Appeal (1878) 5 Wkly. Notes Cas. (Pa.) 485; Rorke v. San Francisco S. & E. B. (1893) 99 Cal. 196, 33 Pac. 881.

[17] Hussey v. Gallagher (1878) 61 Ga. 92; Haebler v. New York Produce Exchange (1896) 149 N. Y. 414, 44 N. E. 87; Roxbury Lodge, No. 184, v. Hocking (1897) 60 N. J. Law, 439; Grand Cent. Lodge, No. 297, v. Grogan (1892) 44 Ill. App. 111; Cheney v. Ketcham (1898) 7 Ohio Dec. 183, 5 Ohio N. P. 139; Van Poucke v. Netherland St. V. P. Soc. (1886) 63 Mich. 378, 29 N. W. 863.

[18] Russell v. North American Ben. Ass'n (1898) 116 Mich. 699, 75 N. W. 137; Raymond v. Farmers' Mut. Fire Ins. Co. (1897) 114 Mich. 386, 72 N. W. 254; Fillmore v. Great Camp, K. of M. (1895) 103 Mich. 437, 61 N. W. 785; Hembeau v. Great Camp, K. of M. (1894) 101 Mich. 161, 59 N. W. 417; Canfield v. Great Camp, K. of M. (1891) 87 Mich. 626, 49 N. W. 875. And see Osceola Tribe, No. 111, v. Schmidt (1881) 57 Md. 98.

[19] Anacosta Tribe, No. 12, v. Murbach (1859) 13 Md. 93.

[20] McMahon v. Supreme Tent, K. of M. (1899) 15 Mo. 522, 52 S.

must in all cases have notice of proceedings for his expulsion, and an opportunity to be heard,[21] and all formalities prescribed by the by-laws must be observed.[22] Such by-laws are always strictly construed, and their language will not be extended by implication.[23] But a member may, of course, waive notice or any other provision for his benefit.[24] And it has been held that a by-law providing for expulsion without notice will not invalidate proceedings taken under its authority, where the accused by his own act made it impossible that he should attend had notice been

W. 384; Voluntary Relief Dept. v. Spencer (1897) 17 Ind. App. 123, 46 N. E. 477; Daniher v. Grand Lodge, A. O. U. W. (1894) 10 Utah, 110, 37 Pac. 245; Quinlan v. St. Francis Xavier Mut. Ben. Soc. (1886) 2 City Ct. Rep. (N. Y.) 356.

[21] Loubat v. LeRoy (1886) 40 Hun (N. Y.) 546; Wachtel v. Noah W. & O. Benev. Soc. (1881) 84 N. Y. 28; Simmons v. Syracuse B. & N. Y. & O. Benev. Soc. (1890) 56 Hun, 645, 10 N. Y. Supp. 293; People v. Greenwood Lake Ass'n (1892) 18 N. Y. Supp. 491; Erd v. Bavarian N. A. & R. Ass'n (1887) 67 Mich. 233, 34 N. W. 555; Lysaght v. St. Louis O. S. Ass'n (1893) 55 Mo. App. 538; Swaine v. Miller (1897) 72 Mo. App. 446; Cotton Jammers & Longshoremen's Ass'n, No. 2, v. Taylor (1900) 23 Tex. Civ. App. 367, 56 S. W. 553; Diligent Fire Co. v. Commonwealth (1874) 75 Pa. St. 291.

[22] Byram v. Sovereign Camp, W. of W. (1899) 108 Iowa, 430, 79 N. W. 144.

[23] Schiff v. Supreme Lodge, O. M. P. (1896) 64 Ill. App. 341; Grand Cent. Lodge, No. 297, v. Grogan (1892) 44 Ill. App. 111; Roxbury Lodge, No. 184, v. Hocking (1897) 60 N. J. Law, 439, 38 Atl. 693; Voluntary Relief Dept. v. Spencer (1897) 17 Ind. App. 123, 46 N. E. 477; People v. Alpha Lodge, No. 1 (1895) 13 Misc. Rep. 677, 35 N. Y. Supp. 214. But see People v. St. George's Soc. (1873) 28 Mich. 261.

[24] Miller v. United States Grand Lodge (1897) 72 Mo. App. 499; State v. Cincinnati C. of C. & M. E. (1897) 4 Ohio N. P. 244.

given him.[25] By-laws may provide for a preliminary investigation without notice.[26]

The authorities are agreed that before a member can appeal to the courts he must exhaust his remedies under the by-laws of the association.[27] A member cannot anticipate injury, and invoke the aid of equity to restrain the association from proceeding with a hearing.[28] And it has been held that failure to appear and answer charges is not excused by insanity;[29] nor will the miscarriage of an assessment notice under a by-law authorizing notice by mail excuse nonpayment, so as to invalidate a subsequent suspen-

[25] Berkhout v. Supreme Council, R. A. (1899) 62 N. J. Law, 103, 43 Atl. 1.

[26] Green v. Board of Trade (1898) 174 Ill. 585, 51 N. E. 599.

[27] Lawson v. Hewell (1897) 118 Cal. 613, 50 Pac. 763; People v. Women's C. O. F. (1896) 162 Ill. 78, 44 N. E. 401; Grant v. Langstaff (1893) 52 Ill. App. 128; Blumenfeldt v. Karschuck (1891) 43 Ill. App. 434; Levy v. Order of Iron Hall (1892) 67 N. H. 593, 38 Atl. 18; Jeane v. Grand Lodge, A. O. U. W. (1894) 86 Me. 434, 30 Atl. 70; McMahon v. Supreme Council, O. C. F. (1893) 54 Mo. App. 468; Levy v. Grand Lodge (1894) 9 Misc. Rep. 633, 30 N. Y. Supp. 885; Wood v. What Cheer Lodge (1896) 35 Atl. 1045, 20 R. I. 795, 38 Atl. 895; Miller v. Wolf (1901) 18 Lanc. Law Rev. (Pa.) 105; Coffee v. Southwark Beneficial Soc. (1876) 2 Wkly. Notes Cas. (Pa.) 600; Herman v. Plummer (1898) 20 Wash. 363, 55 Pac. 315; Loeffler v. Modern Woodmen (1898) 100 Wis. 79, 75 N. W. 1012; State v. Castle Excelsior No. 1 (1883) 10 Wkly. Law Bul. (Ohio) 2; Fillmore v. Great Camp, K. of M. (1896) 109 Mich. 13, 66 N. W. 675; Montour v. Grand Lodge, A. O. U. W. (Or.; 1900) 62 Pac. 524.

[28] Grand Commandery of Massachusetts v. Stewart (Mass.; 1900) 58 N. E. 689; Thomas v. Musical Mut. Protective Union (1890) 121 N. Y. 45, 24 N. E. 26.

[29] Pfeiffer v. Weishaupt (1885) 13 Daly (N. Y.) 161.

sion.[30] But the remedy provided by the by-laws must be adequate,[31] and available to the accused of his own motion, as a matter of right, not of favor.[32] To require a member to appeal from one tribunal to another before resorting to the courts, a by-law must be mandatory, and not merely permissive.[33] Proceedings for expulsion must be in accordance with the by-laws as to notice and jurisdiction of the offense to require a member to appeal to a higher tribunal for reversal of his expulsion.[34]

Same—When expulsion will be reviewed.

§ 153. The supreme court of Illinois lays down the rule that, in determining whether the courts will take jurisdiction to review an expulsion from membership, a distinction must be observed between cases in which the association subjects its members to discipline for immoral conduct or for violation of the rules of the order, and those in which a member appeals to the courts to secure property rights or enforce money demands. In the latter case, it is sufficient to show that the expulsion was invalid, without showing the exhaustion of all the remedies within the rules for a reversal of the determination. In the former

[30] Weakly v. Northwestern Benev. & Mut. Aid Ass'n (1886) 19 Ill. App. 327.

[31] People v. Musical Mut. Protective Union (1889) 118 N. Y. 101, 23 N. E. 129.

[32] Holmany v. National Slavonic Soc. (1899) 39 App. Div. 573, 57 N. Y. Supp. 720.

[33] Supreme Lodge, O. S. F., v. Dey (1897) 58 Kan. 283, 49 Pac. 74.

[34] Women's C. O. F. v. Haley (1900) 86 Ill. App. 330. But see Screwmen's Ben. Ass'n v. Benson (1890) 76 Tex. 552, 13 S. W. 379.

case, it must appear that such means of review have been exhausted.[35] A member of a voluntary organization may, of course, consent to have his private conduct reviewed by the association.[36] Hence a by-law providing for the expulsion of members who should be guilty of conduct injurious to the interests of the club is valid.[37] But a by-law which vests in a majority power to expel for disorderly conduct has been held to be void.[38] Where a board of trade suspends a member on a charge and hearing pursuant to by-laws providing for expulsion when a member shall be guilty of any act of bad faith, or any other dishonorable conduct, its determination will not be reviewed by the courts.[39] So, where the charter of an incorporated club authorizes the expulsion of members for causes to be regulated by the by-laws, a by-law which gives the directors power to expel a member "for acts or conduct which they may deem disorderly" is valid.[40] When the by-laws of a club subject a member to expulsion for conduct unbecoming a gentleman, on a two-thirds vote of the board of governors, the corporate authorities alone must determine whether the conduct of a member in accusing the daughter of a fellow member, within the club, and to members thereof, of writing anonymous letters, is a violation of the by-law.[41] But

[35] People v. Women's C. O. F. (1896) 162 Ill. 78, 44 N. E. 401. And see Grand Lodge, K. of P., v. People (1895) 60 Ill. App. 550.

[36] Farmer v. Board of Trade (1899) 78 Mo. App. 557.

[37] Dawkins v. Antrobus (1879) 17 Ch. Div. 615.

[38] Evans v. Philadelphia Club (1865) 50 Pa. St. 107.

[39] Board of Trade v. Nelson (1896) 162 Ill. 431, 44 N. E. 743.

[40] Commonwealth v. Union League (1890) 135 Pa. St. 301, 19 Atl. 1030.

[41] United States v. Metropolitan Club (1897) 11 App. D. C. 180.

a by-law of a produce exchange providing that a member may be censured, suspended or expelled for willful violation of the charter, fraudulent breach of contract, or any proceedings inconsistent with just and equitable principles of trade, or other misconduct, does not authorize the board of managers to suspend a member upon a charge involving mere breach of contract,[42] and where a committee of a board of trade, charged with the investigation of an alleged failure on the part of members to adjust their respective claims to money deposited as margins upon an executory contract of sale, decides such controversy by taking the difference between the contract price and the board price, without permitting the accused to show that the board price was not the real market value, but merely a fictitious price produced by pretended sales made to corner the market, the decision of such committee is not binding.[43]

Where the certificate of a mutual benefit association is made payable on condition that the insured is in good standing in the society at his death, and the constitution of the society provides that, upon due trial and conviction of unbecoming conduct, a member shall be reprimanded, suspended, or expelled, loss of good standing can only be shown by proof of some official action of the society, and not by mere oral evidence.[44] A by-law provid-

[42] People v. New York Produce Exchange (1894) 8 Misc. Rep. 552, 29 N. Y. Supp. 307.

[43] Ryan v. Cudahy (1895) 157 Ill. 108, 41 N. E. 760.

[44] High Court, I. O. F., v. Zak (1891) 136 Ill. 185, 26 N. E. 593.

ing that a member against whom charges are preferred shall have a fair trial upon evidence has been held to mean legal evidence by the rules of the common law.[45]

[45] Modern Woodmen v. Deters (1896) 65 Ill. App. 368.

CHAPTER VII.

NECESSITY OF BY-LAWS.

By-laws a practical necessity.

§ 154. Although it is theoretically possible for a corporation to exist without by-laws, yet the condition of that corporation's affairs will be much like that of a country whose statute book is a blank. In most, if not all, of the United States, certain matters, such as the calling of corporate meetings, the duties of corporate officers, and the like, are left by statute to be regulated by the by-laws. Where this is the case, the neglect to adopt by-laws is always fraught with inconvenience, and sometimes with disaster. Courts of equity can interpret, but not make contracts;[1] they have no jurisdiction to supplement the powers of voluntary associations when, through neglect to enact suitable by-laws, they are found to be inadequate.[2] But where an association had no constitution or by-laws, it was held that a usage or custom in relation to meetings was

1 Scanlan v. Snow (1894) 2 App. D. C. 137.
2 Powers v. Budy (1895) 45 Neb. 208, 63 N. W. 476.

entitled to consideration in determining questions relating thereto.[3]

Validity of acts in the absence of by-laws.

§ 155. Where a corporation has no by-laws prescribing the manner of calling corporate meetings, votes passed at meetings of the corporation are not binding, unless it is shown that all the members either were present or had actual notice of the meeting.[4] And under a statute providing that stock may be sold to satisfy delinquent assessments under such regulations as the corporation by its by-laws may direct, no valid sale of stock for delinquent assessments can be made where no by-laws on the subject have been passed.[5] Where the constitution of a society provides that the manner of suspending members for nonpayment of dues shall be detailed in the by-laws, the society cannot suspend a member for nonpayment of dues until it has adopted a by-law covering the case.[6] When a charter directs that all elections of directors after the first shall be held annually at such times as the by-laws shall direct, no second election of directors can be held until by-laws designating the time of such election have been adopted.[7] It has been held, however, under a statute providing that the corporation should be governed by di-

[3] Ostrom v. Greene (1897) 20 Misc. Rep. 177, 45 N. Y. Supp. 852.

[4] Wiggin v. Freewill Baptist Church (1844) 8 Metc. (Mass.) 312.

[5] Mitchell v. Vermont Copper Mining Co. (1876) 40 N. Y. Super. Ct. 413.

[6] District Grand Lodge v. Cohn (1886) 20 Ill. App. 348.

[7] Johnston v. Jones (1872) 23 N. J. Eq. 216.

rectors, who should be chosen by the members at their annual meeting, and that such annual meeting should be held at such time and place as might be provided by the by-laws, that an election of directors held before any by-laws had been adopted was valid, since the provision that the directors should be elected at the annual meeting was merely directory, and did not invalidate an election of directors held at some other time.[8]

Same.

§ 156. In a recent case in Arkansas, it was held that where there was no by-law providing what notice of directors' meetings should be given, actual personal notice must be given to each director in order to render a meeting of the board of directors valid.[9] And in a Michigan case, involving a corporation whose charter provided that the corporation should consist of the original members and such other persons as should subscribe or become holders in the manner to be provided by the by-laws, it was held that no new members could be received into the corporation until a set of by-laws had been adopted.[10]

By-laws should be adopted.

§ 157. In view of the many and manifest disadvantages and inconveniences attending any attempt to carry on the business of a corporation without by-laws, it should be the first duty of the directors of a newly-organized corporation to secure the adoption of a full code of by-laws.

[8] Hughes v. Parker (1849) 20 N. H. 70.

[9] Bank of Little Rock v. McCarthy (1892) 55 Ark. 473, 18 S. W. 759.

[10] Carlisle v. Saginaw V. & St. L. R. Co. (1873) 27 Mich. 315, 5 Am. Corp. Cas. 456.

CHAPTER VIII.

PROOF OF BY-LAWS.

Necessity of proof.

§ 158. Since by-laws partake rather of the nature of contracts than of statutes, and are merely of local and limited application, it follows that when any question in regard to them arises in an action at law, the by-laws must be pleaded[1] and proved.[2] The courts cannot take judicial notice of them, as they do of public statutes.[3]

Manner of proof.

§ 159. The contents of written by-laws cannot be proved by the oral testimony of one of the officers of the corporation. The by-laws themselves must be produced in court.[4] It is not necessary to introduce the original books of the as-

[1] Wright v. Supreme Commandery, G. R. (1891) 87 Ga. 426, 13 S. E. 564; Women's C. O. F. v. Condon (1899) 84 Ill. App. 564; Ottawa Union Bldg. Soc. v. Scott (1865) 24 Up. Can. Q. B. 341.

[2] O'Connell v. Supreme Conclave, K. of D. (1897) 102 Ga. 143, 28 S. E. 282.

[3] Haven v. New Hampshire Asylum (1843) 13 N. H. 532, 38 Am. Dec. 512; Carroll v. Mullanphy Savings Bank (1880) 8 Mo. App. 253.

[4] Lumbard v. Aldrich (1835) 8 N. H. 31; American B. & L. Ass'n v. Mordock (1894) 39 Neb. 413, 58 N. W. 107.

sociation in evidence; by-laws may be shown by a proved copy.[5] In an action against a benefit society it was held that the plaintiff need not prove the provisions of the defendant's by-laws, where the answer set them forth.[6] Proof of by-laws is now regulated by statute in some states.[7] The adoption of by-laws may be proved by the records of the meeting at which they were adopted,[8] and where there is no formal record of their adoption, the adoption of the by-laws may be proved by oral evidence of the acts and representations of the officers and directors of the corporation,[9] or by the testimony of officers or members who were present when they were adopted.[10] In an action by the receiver of a building and loan association against one of its members for dues, it was held that the defendant's pass-book, which contained a copy of the by-laws, was admissible in evidence in proof of the by-laws on behalf of the plaintiff, in connection with the testimony of a witness that the by-laws contained in that book were the only by-laws the association had ever had.[11] The by-laws of a corporation restricting and limiting the powers of the officers are competent evidence as to the authority of such officers,[12] and

[5] Zimmerman v. Masonic Aid Ass'n (1896) 75 Fed. 236.

[6] Greenspau v. American Star Order (1892) 20 N. Y. Supp. 945.

[7] See High Court, I. O. F., v. Heath (1898) 80 Ill. App. 239; Lloyd v. Supreme Lodge, K. of P. (C. C. A.; 1899) 98 Fed. 66.

[8] Commonwealth v. Woelper (1817) 3 Serg. & R. (Pa.) 31.

[9] Union Bank v. Ridgely (1827) 1 Har. & G. (Md.) 412.

[10] Masonic Mut. Ben. Ass'n v. Severson (1899) 71 Conn. 719, 43 Atl. 192.

[11] Frank v. Morrison (1882) 58 Md. 438.

[12] De Bost v. Albert Palmer Co. (1885) 1 How. Pr. (N. S.; N. Y.) 501; Railway E. & P. Co. v. Lincoln Nat. Bank (1894) 82 Hun, 8, 31 N. Y. Supp. 44.

the by-laws are also evidence of the extent of the officers' liability to the corporation.[13] The fact that the articles require a written record does not necessarily exclude oral evidence of the facts required to be kept in writing.[14] In a suit against a mutual benefit society for benefits, the by-laws of the society may be introduced in evidence by it, although they are not attached to the certificate of membership.[15]

[13] Bank of Wilmington v. Wollaston (1840) 3 Har. (Del.) 90.

[14] Du Quoin Star C. M. Co. v. Thorwell (1879) 3 Ill. App. 394.

[15] Espy v. American Legion of Honor (1893) 7 Kulp (Pa.) 134.

APPENDIX.

APPENDIX.

FORM OF BY-LAWS.

As the by-laws of private corporations are often drawn up by persons not learned in the law, it has been thought advisable to append to this work a set of by-laws. This code of by-laws is not intended as a model to be slavishly followed, but rather as a suggestion to be considered in connection with the charter of the corporation and the statutes.

It is impossible to frame a set of by-laws that will be proper and sufficient for all kinds of corporations organized under the laws of different states. The first task of a person about to draw up a set of by-laws should be to examine carefully the charter of the corporation and the statutes of the state under which it is organized. After he has done that, he may derive some assistance from the examination of the following by-laws:

BY-LAWS.

ARTICLE I.

STOCK.

SECTION 1. The capital stock of this corporation shall

be divided into ..... shares of the value of ..... dollars each.

SEC. 2. All certificates of stock shall be signed by both the president and the secretary, and sealed with the corporate seal.

SEC. 3. Shares of capital stock may be transferred by indorsement of the certificate, and its surrender to the secretary for cancellation, whereupon a new certificate shall be issued to the transferee. The board of directors may by resolution forbid the transfer of stock for a space of time, not exceeding thirty days, immediately before a meeting of the stockholders, or immediately before the time when a dividend is payable.

SEC. 4. Upon failure of any stockholder to pay any assessment levied on his stock for thirty days after the same shall become due, the secretary shall cause a written or printed notice to be served personally on such stockholder, or to be sent to him by registered mail. Such notice shall state the amount due from such stockholder, and shall notify him that, unless he pays the same within thirty days after the service or mailing of said notice, his stock will be forfeited. If the delinquent stockholder fails to pay the entire amount due from him within the time specified in such notice, his stock shall become forfeited without further action on the part of the corporation, and such forfeited stock may thereupon, without further notice, be sold by the secretary for the benefit of the corporation at either public or private sale; provided that the pro-

ceeds of such sale, if any, over and above the amount due on said stock, shall be paid, on demand, to the delinquent stockholder.

ARTICLE II.

STOCKHOLDERS' MEETINGS.

SECTION 1. The regular annual meeting of the stockholders of this corporation shall be held at the general office of the corporation in the city of ..... on the first Monday of ..... in each year, at the hour of ... o'clock P. M. Special meetings of the stockholders may be called by the directors. Such special meetings shall be held at the same place and the same hour as the regular annual meeting.

SEC. 2. The secretary shall mail to each stockholder at his last known place of residence a written or printed notice of the time and place of holding every annual or special stockholders' meeting. Such notice shall be mailed at least thirty days before the time at which the meeting is to be held.

SEC. 3. At all meetings of the stockholders, each stockholder shall be entitled to cast one vote for each share of stock held by him. He may vote in person or by proxy appointed in writing.

SEC. 4. At any stockholders' meeting, a majority of the stock issued must be represented in order to constitute a quorum for the transaction of business; but the stockhold-

ers present at any meeting, though less than a quorum, may adjourn the meeting to some other day.

SEC. 5. The president and secretary of the corporation shall act as president and secretary of each stockholders' meeting, unless the meeting shall otherwise decide.

ARTICLE III.

DIRECTORS.

SECTION 1. The affairs of this corporation shall be managed by a board of ..... directors, who shall be elected by the stockholders at the regular annual meeting, and who shall hold office for one year, and until their successors are elected.

SEC. 2. The directors shall elect all the other officers of the corporation. Vacancies in the board of directors may be filled by election by the remaining members of the board at any regular or special meeting.

SEC. 3. No person shall be eligible to the office of director who is not a stockholder in the corporation. A transfer by a director of all his stock in the corporation shall operate as a resignation of his office.

SEC. 4. No director shall receive any salary or compensation for his services as director.

SEC. 5. Regular meetings of the board of directors shall be held immediately after the adjournment of each regular annual meeting of the stockholders, and also upon the first

Monday of each month at the hour of ... o'clock P. M. Such meetings shall be held at the general office of the corporation.

SEC. 6. Special meetings of the board of directors may be called at any time by the president by mailing to each director at least three days before the time of such meeting a written or printed notice stating the time and place of holding such meeting.

SEC. 7. At any regular or special meeting of the board of directors, a majority of the directors shall constitute a quorum for the transaction of business, but a smaller number may adjourn the meeting to another day.

SEC. 8. At each regular annual meeting of the stockholders, the directors shall present a general statement of the business of the preceding year and a report of the financial condition of the corporation.

ARTICLE IV.

OFFICERS.

SECTION 1. The officers of this corporation shall consist of a president, vice president, secretary, and treasurer, who shall be elected by the directors, and who shall perform the duties usually appertaining to their respective offices. They shall hold office for one year, and until their successors are elected and qualified.

SEC. 2. No person shall be eligible to the office of president or vice president who is not a director. A president

or vice president who ceases to be a director ceases at the same time to hold the office of president or vice president. The offices of secretary and treasurer may be held by the same person at the same time.

SEC. 3. The directors may, by resolution, require any or all of said officers to give bond to the corporation with sufficient surety conditioned for their faithful performance of the duties of their respective offices.

SEC. 4. All written contracts entered into on behalf of the corporation shall be signed by both the president and the secretary, and sealed with the corporate seal.

ARTICLE V.

AMENDMENT.

SECTION 1. These by-laws or any of them may be altered, amended, added to, or repealed by the same body that enacted them.

The foregoing by-laws are substantially the same as those published in the first edition of this work. The main idea in drawing them was to put in the essential features, and leave out everything else, on the theory that unnecessary by-laws may become a trap for unwary officers. The author has been gratified to learn that this code of by-laws has been used with satisfaction in many cases since its first publication. Some persons, however, may prefer a more elaborate code, and therefore it has been thought best to add to this edition the following alternative set of by-laws:

BY-LAWS.

ARTICLE I.

SEAL AND PLACE OF BUSINESS.

SECTION 1. The corporate seal of this corporation shall have engraved on it in the center the words "Corporate Seal," and the date of incorporation, and in a circle around the edge the full name of the corporation.

SEC. 2. Until changed by the directors, the general office of this corporation shall be at No. ....., ... Street, in the City of ....., County of ....., and State of ....., but the directors may at any regular or special meeting change the place of such office.

ARTICLE II.

CAPITAL STOCK.

SECTION 1. The capital stock of this corporation shall be divided into ..... shares, of the value of ..... dollars each. All of said stock shall entitle the holders to equal rights in the corporation unless the stockholders, by unanimous vote, shall determine to divide the stock into two classes, namely, common stock and preferred stock.

SEC. 2. All certificates of stock shall be signed by the president, and sealed with the corporate seal, attested by the secretary. They shall state whether the stock is fully paid or not. In case preferred stock is issued, the contract in regard to such stock shall be fully set forth in the certificates of preferred stock, and the certificates of common stock shall state the respective amounts of both the pre-

ferred and common stock. The directors may also provide for the registration of all stock by some bank or trust company.

SEC. 3. Shares of capital stock may be transferred on indorsement of the certificate duly witnessed, and its surrender to the secretary for cancellation, whereupon the stock shall be transferred on the books of the corporation, and the transferee shall be entitled to have a new certificate issued to him. The board of directors may by resolution forbid the transfer of stock on the books of the corporation for a space of time, not exceeding thirty days, immediately before a meeting of the stockholders, or immediately before the payment of a dividend.

SEC. 4. In case of loss or destruction of a certificate of capital stock, the owner shall not be entitled to receive a new certificate in lieu thereof until the lapse of sixty days after written notice of such loss or destruction has been served on the secretary, and then only on making satisfactory proof of such loss or destruction, and on giving the corporation ample indemnity, by bond or otherwise, as the directors may prescribe. Any such new certificate shall be plainly marked "Duplicate" on the face thereof.

SEC. 5. In case of the death of a stockholder, a new certificate may be issued to his personal representatives on surrender of the old certificate, and on filing with the secretary a duly-certified copy of the letters testamentary or of administration.

SEC. 6. Stock subscriptions shall be paid at such times

and in such installments as may be determined by the directors, but all subscribers shall have the privilege of paying for their stock in full at any time, even though full payment has not yet been called for.

SEC. 7. Upon failure of any subscriber or stockholder to pay any assessment levied by the directors on his stock for thirty days after the same shall become due, the secretary shall cause a written or printed notice to be served personally on such delinquent stockholder, or to be sent to him by registered mail at his last known address. Such notice shall state the amount due from such stockholder, and shall notify him that, unless he pays the same within thirty days after the service or mailing of such notice, his stock will be forfeited. If the delinquent stockholder fails to pay the entire amount due from him within the time specified in such notice, his stock shall become forfeited without further action on the part of the corporation, and such forfeited stock may thereupon, without further notice, be sold by the secretary for the benefit of the corporation at either public or private sale, provided that the surplus proceeds of such sale, if any, over and above the amount due on such stock, shall be paid, on demand, to the delinquent stockholder.

ARTICLE III.

STOCKHOLDERS' MEETINGS.

SECTION 1. The regular annual meeting of the stockholders of this corporation shall be held at the general

office of the corporation on the ..... day of the month of ..... in each year, at the hour of ... o'clock P. M.; provided that, when said day shall fall on Sunday, such meeting shall be held on the following day, at the same hour and place.

SEC. 2. Special meetings of the stockholders may be called by the directors, and it shall be their duty to do so whenever requested in writing by stockholders holding one-tenth or more of the capital stock. Such special meetings shall be held at the same place and the same hour as the regular annual meetings.

SEC. 3. The secretary shall mail to each stockholder, at his last known address, a written or printed notice of the time and place of holding every annual or special stockholders' meeting. Such notice shall be mailed at least thirty days before the day of the meeting. The secretary shall also publish such notice at least once in a newspaper of general circulation published in the city of ....., such publication to be made at least ten days before the day of the meeting.

SEC. 4. At all meetings of the stockholders, each stockholder shall be entitled to cast one vote for each share of stock held by him, unless he is in default in paying for the same. Such votes may be cast in person or by proxy. All proxies shall be in writing signed by the stockholder, and acknowledged like a conveyance of land.

SEC. 5. At any stockholders' meeting, a majority of the stock issued must be represented in order to constitute a

quorum for the transaction of business; but the stockholders present at any meeting, though less than a quorum, may adjourn the meeting to some other day.

SEC. 6. The president and secretary of the corporation shall act as president and secretary, respectively, of each stockholders' meeting, and they shall constitute a committee to pass on the authenticity of proxies.

SEC. 7. The order of business at stockholders' meetings shall be as follows: (1) Roll call; (2) reading of minutes of previous meeting; (3) report of president; (4) report of treasurer; (5) election of directors; and (6) miscellaneous business. Election of directors shall be by ballot.

ARTICLE IV.

DIRECTORS.

SECTION 1. The affairs of this corporation shall be managed by a board of ..... directors, who shall be elected by the stockholders at the regular annual meeting, and who shall hold office for one year, and until their successors are elected.

SEC. 2. The directors shall elect all the other officers of the corporation. Such election shall be held annually, as soon as possible after the annual stockholders' meeting. Vacancies in the board of directors may be filled by election by the remaining members of the board at any regular or special meeting.

SEC. 3. Only stockholders in the corporation shall be eligible to the office of director. A transfer by a director of all his stock in the corporation shall operate as a resignation of his office.

SEC. 4. Directors shall not receive any salary or compensation for their services as directors, but a director who is also an officer of the corporation may, by resolution of the board, receive compensation for his services as such officer.

SEC. 5. Regular meetings of the board of directors shall be held immediately after the adjournment of each regular annual meeting of the stockholders, and also upon the first Monday of each month at the hour of ... o'clock P. M. All directors' meetings shall be held at the general office of the corporation.

SEC. 6. Special meetings of the board of directors may be called at any time by the president, or by any two directors, by mailing to each director, at least three days before the time of such meeting, a written or printed notice stating the time of such meeting.

SEC. 7. At any regular or special meeting of the board of directors, a majority of the directors shall constitute a quorum for the transaction of business, but a smaller number may adjourn the meeting to another day.

SEC. 8. At all meetings of the board of directors, the order of business shall be as follows: (1) Roll call; (2) reading of minutes of previous meeting; (3) reports from

officers; (4) reports from committees; (5) unfinished business; and (6) new business. Whenever there are any officers or directors to be elected, such election shall take place immediately after the reading of the minutes of the previous meeting.

ARTICLE V.

OFFICERS.

SECTION 1. The officers of this corporation shall be a president, vice president, secretary, and treasurer. They shall be elected by the directors as soon as practicable after each election of directors, and shall hold office for one year, and until their successors are elected and qualified.

SEC. 2. Only directors shall be eligible to the offices of president and vice president. A president or vice president who ceases to be a director shall cease to hold office as president or vice president as soon as his successor is elected. The offices of secretary and treasurer may be held by the same person at the same time.

SEC. 3. The president shall be the general executive officer of the corporation. He shall preside at all meetings of the directors and of the stockholders, shall prepare and present at each annual stockholders' meeting a report of the business of the corporation for the preceding year, and a statement of its present condition, shall sign all stock certificates and written contracts of the corporation, and perform generally all the duties usually appertaining to the office of president of a corporation. He shall have

general charge (subject to the control of the board of directors) of the business affairs of the corporation, may sign and indorse bonds, bills, checks, and promissory notes on behalf of the corporation, and may borrow money in its name; but he shall have no power, without the previous consent of the board of directors, to incur any debt on behalf of the corporation in excess of the sum of ..... dollars, or, without such consent, to bind the corporation by any obligation involving a liability in excess of said sum. He shall at all times keep the directors advised as to the affairs of the corporation.

SEC. 4. The vice president shall preside at any meetings of the stockholders and of the directors from which the president may be absent, and he may perform any of the other duties of the president whenever directed to do so by vote of the board of directors.

SEC. 5. The secretary shall keep the minutes of all stockholders' and directors' meetings, shall keep the stock register and stock transfer book, and shall be the custodian of the corporate seal and of all records, papers, files, and books of the corporation except the account books. He shall affix the corporate seal to all documents to which it should be attached, and attest the same by his signature, and shall perform generally all the duties usually appertaining to the office of secretary of a corporation.

SEC. 6. The treasurer shall have custody of all the money and funds of the corporation, shall keep its books of account, and shall countersign the checks of the corpora-

tion. He shall deposit the funds of the corporation in some bank or banks, to be selected by him, with the approval of the board of directors, in the name of the corporation. He shall give bond to the corporation in an amount to be fixed by the board of directors, and with sureties to be approved by them. He shall at all times keep the directors fully informed as to the financial condition of the corporation, and he shall prepare and present at each annual stockholders' meeting a report showing the receipts and disbursements of the preceding year, and the present financial condition of the corporation. He shall be the general financial officer of the corporation, and shall perform all the duties usually appertaining to the office of treasurer of a corporation.

ARTICLE VI.

AMENDMENT.

SECTION 1. These by-laws, or any of them, may be altered, amended, added to, or repealed by the .....[1] at any regular or special meeting.

Since the great industrial corporations are now very much before the public, copies of the by-laws of two of them are here given. It will be noted that one of these companies has adopted a very brief form of by-laws, and the other a very long one.[2]

[1] Insert "stockholders" or "directors," according to the provisions of the law under which the corporation is organized.

[2] These by-laws are taken from the Preliminary Report of the United States Industrial Commission on Trusts and Industrial Combinations.

BY-LAWS.

OF THE

STANDARD OIL COMPANY.

ARTICLE I.

MEETING OF STOCKHOLDERS.

The annual meeting of stockholders and the election of directors shall be held at the office of the company in Bayonne, New Jersey, on the second Tuesday in January in each year, and said meeting may be adjourned from day to day until its business is completed.

Special meetings of the stockholders may be called by a majority of all the directors at such times and places as they may appoint.

The directors shall also call a meeting of stockholders within ten days after a written request so to do, signed by a majority of the stockholders.

The business of such special meetings shall be confined to the subject specified in the notice therefor.

Notice of the time and place of all meetings of stockholders shall be signed by the secretary, and be given to each stockholder in person or be mailed to his proper post-office address at least ten days previous to the time of meeting.

At all meetings, stockholders who may be registered as such on the books of the company may vote in person, by agent, or by proxy, and shall have one vote for each and every share of stock standing in their names, but no share-

holder shall be entitled to vote upon any stock which has not stood in his name ten days prior to the day appointed for the election.

The transfer books may be closed for ten days previous to the annual election.

At all elections the directors shall be the judges of the qualifications of voters, shall prescribe rules and regulations for voting, appoint inspectors to collect and count the votes, and cause the result of the election to be entered in full on their minutes.

The board may commit its powers in this matter to a committee of its own members.

The election shall be held on the day designated for that purpose, unless prevented by accident, in which case the board shall designate another day for the election.

A majority of the stockholders present at any meeting shall constitute a quorum.

ARTICLE II.

BOARD OF DIRECTORS.

The board of directors shall consist of thirteen persons, who shall hold their office one year, and until their successors are elected.

The board of directors, at their first meeting after every annual election, shall elect a president, four vice presidents, a treasurer, and secretary, and such officers shall hold their offices during the pleasure of the board. One person may be both secretary and treasurer.

In case of any vacancy in the board of directors by death,

resignation, or otherwise, the board shall have the power to fill, for the unexpired term, such vacancy by ballot.

The board may also appoint one assistant treasurer, one assistant secretary, and such additional officers and agents as they may deem advisable, and remove the same at their pleasure.

In the absence of the president and vice presidents, they may appoint a chairman *pro tempore.*

During a prolonged absence or inability of the president, or any other officer, they may appoint substitutes *pro tempore,* and on the death or resignation of the president, or other officer, they shall fill the vacancy.

Five of the directors shall be required to constitute a quorum for the transaction of business, but less than a quorum may adjourn from time to time and from place to place.

The board of directors may, at their option, hold their meeting at any place outside of the state.

Dividends upon the capital stock of the company, when earned, shall be declared by the board of directors on the first Tuesday of February, May, August, and November in each year, the same to be payable on the fifteenth of the succeeding month. The board shall have power to fix the amount to be reserved as working capital.

ARTICLE III.

PRESIDENT.

The president shall preside at all meetings of the stockholders or directors, if present, sign all certificates of stock, and have a general care, supervision, and direction

of the affairs of the company. He shall have power to call meetings of the board from time to time, when he shall think proper, or when requested by a majority of the board.

In the event of the death, absence, or inability of the president to perform any duties imposed upon him by these by-laws and the order of the board of directors, a vice president may exercise his powers and perform his duties, subject to the control of the board of directors.

ARTICLE IV.

SECRETARY.

It shall be the duty of the secretary to notify the members thereof of all meetings of the board of directors when required by the president, or when required by a majority of the directors in writing; to attend such meetings when practicable; keep true records of the votes at elections and all other proceedings; attest such records, after every meeting, by his signature; safely keep all documents and papers which shall come into his possession, and truly keep the books and accounts of the company appertaining to his office, and shall present statements thereof when required by the board. He shall keep books upon which transfer of stock may be made by any stockholder, or his attorney duly constituted in writing. He shall prepare new certificates upon the transfer of shares and surrender of the old certificates, and keep a register of all certificates issued. The assistant secretary shall perform such of these duties as the directors may require.

ARTICLE V.

TREASURER.

It shall be the duty of the treasurer to keep and account for all moneys, funds, and property of the company which shall come into his hands, and he shall render such accounts and present such statements to the directors as may be required of him. He shall deposit all funds of the company which may come into his hands in such bank or banks as the directors may designate; he shall keep his bank account in the name of the company, and shall exhibit his books and accounts to any director upon application at the office during ordinary business hours; he shall indorse for collection the bills, notes, checks, and other negotiable instruments received by the company; he shall pay out money on the business as the corporation may require, taking proper vouchers therefor; provided, however, that the directors shall have power, by resolution, to delegate any of the duties of the treasurer to other officers, and to provide by what officers all bills, notes, checks, vouchers, orders, or other instruments shall be signed. The assistant treasurer shall perform such of these duties as the directors may require.

ARTICLE VI.

CORPORATE SEAL.

A corporate seal shall be prepared and shall be kept by the secretary in the office of the company.

The impression of the seal may be made and attested by

either the secretary or an assistant secretary for the authentication of contracts and other papers requiring the seal and bearing the signature of the president, or one of the vice presidents.

ARTICLE VII.

FISCAL YEAR.

The fiscal year of this corporation shall be the calendar year.

ARTICLE VIII.

AMENDMENTS.

These by-laws may be altered or amended by a vote of the directors at any meeting.

BY-LAWS

OF THE

FEDERAL STEEL COMPANY.

ARTICLE I.

OFFICE AND SEAL.

1. The title of the corporation is "Federal Steel Company."

2. The principal office is at 60 Grand Street, Jersey City, New Jersey.

3. The corporate seal of the company shall have inscribed thereon the name of the corporation, the state (New

Jersey), and the month and year of its creation (September, 1898).

ARTICLE II.

DIRECTORS.

4. The property and business of the corporation shall be managed and controlled by a board of directors, who shall at all times be stockholders. They shall hold office for one year, and until others are elected and qualified in their stead. The number of the first board of directors shall be three, but at any time the number may be increased by vote of the board of directors, and, in case of any such increase, the board of directors shall have power to elect such additional directors to hold office until the next meeting of stockholders, or until their successors shall be elected. If the office of any director becomes or is vacant by reason of death, resignation, disqualification, increase in number, or otherwise, the remaining directors, by a majority vote, may elect a successor, who shall hold office for the unexpired term, or until his successor is elected.

ARTICLE III.

MEETINGS OF STOCKHOLDERS.

5. The annual meeting of the stockholders shall be held on the first Monday of April in each year, if not a legal holiday, and, if a legal holiday, then on the day following, at the registered office of the company, in the state of New Jersey, commencing at 11 o'clock A. M., when they shall elect by a plurality vote by ballot the full board of direct-

ors to serve for one year, and until their successors are elected or chosen and qualified, each stockholder being entitled to one vote in person or by proxy for each share of stock standing registered in his name on the tenth day of the month preceding the election; provided, no stock shall be voted which has been transferred within twenty days of the time of the election.

A majority in amount of the stock outstanding shall be requisite to constitute a quorum for an election of directors or the transaction of other business.

The polls for such election shall be open at 12 o'clock noon, and closed at 1 o'clock in the afternoon.

Notice of the annual meeting may be published in a newspaper in the city of New York once each week during the calendar month next preceding the meeting; but a failure to publish such notice, or any irregularity in the publication or notice, shall not affect the validity of the said meeting or the proceedings therein.

Special meetings of stockholders shall be called by the secretary by mailing a notice at least five days prior to the date of meeting to each stockholder of record at his last-known post-office address, on the request in writing, or by vote, of a majority of the board of directors or executive committee, or on demand in writing by stockholders of record owning a majority of the entire issued capital stock of the company.

ARTICLE IV.

MEETINGS OF DIRECTORS.

6. The board of directors shall meet at the office of

the company in New York immediately after the adjournment of the annual meeting of stockholders, and elect the officers of the corporation for the ensuing year.

Regular meetings of the directors shall be held at the office of the company in New York, or by order of the directors elsewhere, on a day and at an hour to be fixed by resolution of the board.

Notice of regular meetings shall be mailed to each director at his last known post-office address by the secretary at least three days previous to the time fixed for the meeting.

While the number of directors remains at three, a majority shall be necessary to constitute a quorum for the transaction of business; but if the number of directors shall be increased to fifteen, then six shall constitute a quorum for the transaction of business.

Special meetings of the board may be called by the president on one day's notice to each director, delivered to him personally, or left at his residence or usual place of business; or such special meetings may be called in like manner on the written request of three members.

ARTICLE V.

COMPENSATION OF DIRECTORS AND EXECUTIVE COMMITTEE.

7. Directors and members of the executive committee, as such, shall not receive any stated salary for their services, but may be allowed $10 each for attendance at each regular or special meeting, if present at roll call, and until adjournment, unless excused.

ARTICLE VI.

INSPECTORS OF ELECTION.

9. The board of directors, at a meeting held prior to the annual meeting of the stockholders, shall appoint two stockholders to act as inspectors and conduct the election of directors at the ensuing annual meeting of stockholders. Inspectors of election shall not be eligible to the office of director. If any inspector of election fails to attend the election, a successor may be appointed by the stockholders in attendance.

ARTICLE VII.

ORDER OF BUSINESS.

10. The order of business at the meetings of the board of directors shall be as follows:

(1) A quorum being present, the chairman shall call the board to order.

(2) The minutes of the last meeting shall be read and considered as approved if there be no amendments.

(3) Reports of officers of the company.

(4) Reports of committees.

(5) Unfinished business.

(6) Miscellaneous business.

(7) New business.

ARTICLE VIII.

OFFICERS OF THE COMPANY.

11. The officers of the company shall consist of a chair-

man of the board, president, first vice president, second vice president, secretary, general counsel, treasurer, auditor, and such other officers as may from time to time be elected or appointed by the board of directors.

One person may hold more than one office.

ARTICLE IX.

OFFICERS.

12. The directors shall elect from among their own number a chairman of the board, a president, a first vice president, and a second vice president, and shall also appoint a secretary, treasurer, auditor, and general counsel.

ARTICLE X.

DUTIES OF THE CHAIRMAN.

13. It shall be the duty of the chairman to preside at all meetings of the board of directors, and to give such counsel and advice as from time to time may by him be deemed essential to the best interests of the corporation to the executive committee or to the president.

ARTICLE XI.

DUTIES OF THE PRESIDENT.

14. It shall be the duty of the president, in the absence of the chairman of the board, to preside at all meetings of the board of directors; to have general and active management of the business of the company; to see that all orders

and resolutions of the board are carried into effect; to execute all contracts and agreements authorized by the board; to keep in safe custody the seal of the company, and, when authorized by the board or executive committee, to affix the seal to any instrument requiring the same, which seal shall always be attested by the signature of the president and of the secretary or the treasurer. He may sign certificates of stock.

He shall have the general superintendence and direction of all the other officers of the company, except the chairman of the board, and shall see that their duties are properly performed.

He shall submit a complete report of the operations of the company for the year, and the state of its affairs on the 31st day of December, to the directors at their regular meeting in April and to the stockholders at their annual meeting in April of each year, and from time to time shall report to the directors all matters within his knowledge which the interests of the company may require to be brought to their notice.

He shall be *ex officio* a member of all standing committees, and shall have the general powers and duties of supervision and management usually vested in the office of the president of a corporation.

He shall in a general way be familiar with and exercise supervision over the affairs of the other corporations in which this corporation may be interested.

He shall freely consult and advise with the chairman of the board and also the executive committee in relation to the business and interests of the corporation.

ARTICLE XII.

FIRST VICE PRESIDENT.

15. The first vice president shall be vested with all the powers and required to perform all the duties of the president in his absence. He may sign certificates of stock, and he shall perform such other duties as may be prescribed by the board of directors.

ARTICLE XIII.

SECOND VICE PRESIDENT.

16. The second vice president shall be vested with all the powers and required to perform all the duties of the president in the absence of both the president and the first vice president. He may sign certificates of stock, and he shall perform such other duties as may be prescribed by the board of directors.

ARTICLE XIV.

PRESIDENT PRO TEM.

17. In the absence of the president, first vice president, and the second vice president, the board may appoint a president *pro tem.*

ARTICLE XV.

SECRETARY.

18. The secretary shall be *ex officio* secretary of the board of directors and of the standing committees. He

shall attend all sessions of the board, shall act as clerk thereof, and record all votes and the minutes of all proceedings in a book to be kept for that purpose.

He shall perform like duties for the standing committees when required.

He shall give notice of all calls for installments to be paid by the stockholders, and shall see that proper notice is given of all meetings of the stockholders of the company and of the board of directors, and shall perform such other duties as may be prescribed by the board of directors or president.

He shall be sworn to the faithful discharge of his duty, and shall give such bond as may be required by the board of directors.

The assistant secretary, if one is appointed, shall be vested with all the powers and required to perform all the duties of the secretary in his absence, inability, refusal, or neglect to act.

ARTICLE XVI.

TREASURER.

19. The treasurer shall keep full and accurate accounts of receipts and disbursements in books belonging to the company, and shall deposit all moneys and other valuable effects in the name and to the credit of the company in such depositaries as may be designated by the board of directors or executive committee.

He shall disburse the funds of the company as may be ordered by the board, taking proper vouchers for such dis-

bursements, and shall render to the president and directors at the regular meetings of the board, or whenever they may require it, an account of all his transactions as treasurer, and of the financial condition of the company, and at the regular meeting of the board in April annually a like report for the preceding year.

He shall give the company a bond in form and in a sum and with security satisfactory to the board of directors or the executive committee for the faithful performance of the duties of his office and the restoration to the company, in case of his death, resignation, or removal from office, of all books, papers, vouchers, money, or other property of whatever kind in his possession belonging to the corporation, and containing such other provisions as the board of directors or executive committee may require.

Certificates of stock, when signed by the president or first vice president or second vice president shall be countersigned by the treasurer. He shall keep the accounts of stock registered and transferred in such form and manner and under such regulations as the board of directors may prescribe.

The assistant treasurer, if one is appointed, shall be vested with all the powers and required to perform all the duties of the treasurer in his absence, inability, refusal, or neglect to act.

ARTICLE XVII.

AUDITOR.

20. The auditor shall have supervision over all the ac-

counts and account books of the company, and see that the system of keeping the same is enforced and maintained.

He shall direct as to forms and blanks relating to books and accounts in all departments, and no change shall be made without his consent, or the consent of the president or executive committee.

He shall see that there is kept in the bookkeeping department a set of books containing a complete record of all business transactions of the company pertaining to accounts.

He shall, when requested, furnish the executive committee or president a statement of the earnings and expenses of the corporation or any other company in which this corporation may be interested for any given time, and shall keep books and records for the purpose of furnishing such statistics.

He shall verify the assets reported by the treasurer or his assistant at least twice a year, and make report of the same to the executive committee.

He shall cause the books and accounts of all officers and agents charged with the receipt or disbursement of money to be examined, and shall ascertain whether or not the cash and vouchers covering the balance are actually on hand.

He shall render such assistance and advice as the president or executive committee may desire concerning the books and accounts and system of financial transactions of all other corporations in which this corporation is interested, and furnish to the president or executive committee such statements concerning the same as may be requested by them.

In case of a default within his information at any time he shall at once notify the president and chairman.

ARTICLE XVIII.

GENERAL COUNSEL.

21. The general counsel shall be the legal adviser of the company, and shall perform such services and receive such compensation as may be determined by the board of directors or the executive committee.

ARTICLE XIX.

DUTIES AS OFFICERS MAY BE DELEGATED.

22. In case of the absence of any officer of the company, the board of directors or the executive committee may delegate his powers or duties to any other officer or to any director for the time being.

EXECUTIVE COMMITTEE.

23. There shall be an executive committee of five directors, selected by the board, who shall meet at regular periods, or on notice to all by any of their own number. They shall advise with and aid the officers of the company in all matters concerning its interests and the management of its business; and when the board of directors is not in session, the executive committee shall have and may exercise all the powers of the board of directors.

The executive committee, unless otherwise provided by

the board of directors, shall fix the salaries or compensation of all officers.

The executive committee shall keep regular minutes, and cause them to be recorded in a book kept in the office of the company for that purpose, and report the same to the board of directors whenever required by them.

ARTICLE XXI.

TERM OF OFFICE.

24. Each officer shall hold his office only during the pleasure of the board of directors, unless otherwise provided by special agreement in writing signed by a majority of the executive committee.

ARTICLE XXII.

TRANSFER OF STOCK.

25. All transfers of stock of the corporation shall be made upon the books of the company by the holder of the shares in person, or by his legal representative; but no transfer of stock shall be made within ten days next preceding the day appointed for paying a dividend.

ARTICLE XXIII.

CERTIFICATES TO BE CANCELLED.

26. Certificates of stock surrendered shall be cancelled by the transfer agent at the time of transfer.

ARTICLE XXIV.

LOSS OF CERTIFICATE.

27. Any person claiming a certificate or evidence of stock to be issued in place of one lost or destroyed shall make an affidavit or affirmation of that fact, and advertise the same in such newspaper and for such space of time as the board of directors may require, describing the certificate, and shall furnish the company with proof of publication by the affidavit of the publisher of the newspaper, and shall give the board a bond of indemnity in form approved by the board, with one or more sureties, if required, in double the par value of such certificate, whereupon the president and treasurer may, one month after the termination of the advertisement, issue a new certificate of the same tenor with the one alleged to be lost or destroyed, but always subject to the approval of the board of directors.

ARTICLE XXV.

CONTRACTS AND AGREEMENTS.

28. No agreement, contract, or obligation (other than a cheque) involving the payment of money or the credit or liability of the company, for more than $5,000, shall be made without the approval of the board of directors or of the executive committee.

ARTICLE XXVI.

CHEQUES FOR MONEY.

29. All cheques, drafts, or orders for the payment of

money shall be signed by the treasurer and countersigned by the chairman of the board or president or first or second vice president.

No cheque shall be signed by both the treasurer and chairman or president or a vice president in blank.

ARTICLE XXVII.

BOOKS AND RECORDS.

30. The books, accounts, and records of the company shall be open to inspection by any member of the board of directors at all times; and stockholders may inspect the books of the company at such times only as the executive committee or board of directors may by resolution designate.

ARTICLE XXVIII.

ALTERATION OF BY-LAWS.

31. The board of directors, by a vote of a majority of the members present at any meeting, may alter or amend these by-laws, but no alteration shall be made unless proposed at a meeting of the board, and considered at subsequent meetings.

ARTICLE XXIX.

STOCK OF OTHER COMPANIES.

None of the shares of the capital stock of the Minnesota Iron Company, the Illinois Steel Company, the Lorain Steel Company, or the Elgin, Joliet and Eastern Railway

Company shall hereafter at any time or times be sold, assigned, transferred, pledged, mortgaged, or incumbered by the directors of the Federal Steel Company without making at least sixty days' previous publication in two prominent daily newspapers published in the city of New York of the intention to make such sale, transfer, assignment, pledge, mortgage, or incumbrance; and also, at the date of the first publication, filing a similar written notice with the chairman and secretary, respectively, of the said committee on stock lists; and also obtaining the consent of those holding a majority in amount of the shares of stock of the Federal Steel Company, by vote at a meeting regularly called and notice mailed to each stockholder at his usual or last known place of business or residence at least thirty days before the time of meeting.

The shares of the capital stock of the said Minnesota Iron Company, Illinois Steel Company, Lorain Steel Company, and Elgin, Joliet and Eastern Railway Company shall be placed and held in the name of some person or persons designated by vote of the directors of the Federal Steel Company to act as trustee therefor, and the certificates for said shares shall provide by indorsement thereon that they are issued and can be transferred only in pursuance of the provisions of this by-law.

This by-law shall never be repealed, amended, or modified except by consent of a majority of the stockholders of the Federal Steel Company, obtained by vote at a meeting held pursuant to notice, stating the time, place, and object of the meeting, and mailed to each stockholder at his usual

or last known place of business or residence at least thirty days before the time of meeting.

This first board of directors of the Federal Steel Company hereby distinctly waives, abrogates, and relinquishes, both for themselves and their successors, all rights and powers conferred by the articles of incorporation of the Federal Steel Company which may not be in accordance herewith, either as to amendment of by-laws, or disposition of above-named property.

ARTICLE XXX.

DIVIDENDS.

The following specific days are hereby fixed for declaring dividends upon the common and preferred stock of the Federal Steel Company, namely: The second Tuesdays in January, February, March, April, May, June, July, August, September, October, November, and December in each and every year; providing, however, that no dividends shall be declared except as permitted by law and by the provisions of the certificate of incorporation of the company; and provided, further, that no dividend shall be declared or paid except from accumulated profits excluding the sum or sums reserved as working capital.

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